From: John Kim
To: Ronald Kwan
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx
Date: Tuesday, September 19, 2017 4:30:06 PM
Attachments: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx

---

Hi Ron,

Pls. see attached draft, based on the earlier note.

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package\Intercept Inclusion Option

Thanks,

John

OFA -- IESO CREDIT FACILITY
THE INTERCEPT PROVISION REQUIRED
UNDER THE OFA'S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA plans to reach out to the Ministry of Energy and the IESO to fulfill the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

PREVIOUS RECOMMENDATION

- In August 2017, OFA staff had recommended the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would have applied to the two specified IESO credit facilities.

CURRENT DIRECTION

Commented [JK1]: Maybe delete this section

- Following consultations with the senior executives at the Ministry of Finance and given the implementation efforts of the Fair Hydro Plen (FHP), the current proposal is to proceed with inserting the intercept provision into the OFHP Credit Facility agreement and the amendment to the existing Original Credit Facility agreement to comply wih the OFA Lending Policy.

  - The main consideration is to avoid the appearance of putting in place a work around of the OFA Lending Policy for the FHP.

CURRENT STATUS

- A decision was made to not proceed with requesting the Intercept Exemption Directive by the Ministry of Finance and to pursue the due steps required under the OFA Lending Policy to put in place the intercept provision in the credit facility agreements.

- The new FHP credit facility with the intercept clause will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility) which will also require the intercept clause to be added.

  - When the original credit facility was put in place effective January 1, 2005 in favour of the Ontario Power Authority, through a Minister's directive received in December 2004, no intercept provision was incorporated nor was an exemption received in the directive. The original agreement has been amended and extended since that time, effectively grandfathering the original agreement [without the intercept provision].
  - The original decision to exclude the intercept provision may have been a legal interpretation from Legal staff at the time or possibly an oversight. OFA staff, following advice from current Legal staff are working to bring the original facility and the new OFHP credit facility onside with the strict interpretation of the OFA Lending Policy.

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness or impact as the IESO receives no operational funding from the Province of Ontario but would bring the lending facilities onside with the requirements of the OFA Lending Policy.

- The IESO settlements system for the electricity sector facilitates the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., This funding from the Ministry of energy is for the

benefit of various electricity consumers and is not part of IESO operational expense which is funded through IESO fees.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

There is no expected fiscal impact related to including an intercept clause.

BACKGROUND

The IESO

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
September 19, 2017

COMMERCIALLY SENSITIVE AND CONFIDENTIAL ADVICE TO MINISTER

From: Bruno Amara
To: Ronald Kwan; John Kim
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Wednesday, May 31, 2017 1:49:31 PM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

---

Ron/John

Will update the other pieces similarly

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by [December 31, 2047].

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to

the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the ~~proposed~~ *Ontario Fair Hydro Plan Act, 2017,* the IESO will~~ould~~ 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The ~~proposed~~ *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - It is anticipated that the regulatory asset will~~ould~~ be purchased by the financing entity to be established by OPG ("OPG SPV", an OPG special purpose vehicle or trust).
    - The cash received will~~ould~~ be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any

time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2.0 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.
-
- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Tab after: 0.25" + Indent at: 0.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Tab after: 0.25" + Indent at: 0.25"

s. 3 Direction and Urgency

- ~~As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, T~~the Province ~~intends to~~ passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will~~ould~~ reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the ~~proposed~~ *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From: Veinot, Cindy (TBS)
To: Ronald Kwan
Subject: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT
Date: Thursday, June 08, 2017 3:17:27 PM
Attachments: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT.docx

---

This is the document I'm referring to-- Cindy

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132, received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "Act). The Act enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), and respective directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 13, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

Commented [VC(1]: To confirm the date requirement

2. RECOMMENDATION

Commented [VC(2]: Message sent to John M – to discuss with Kim

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

Commented [VC(3]: Why as of this date?

3. BACKGROUND

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it

was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

Commented [VC(4]: Alignment with business purpose?

Commented [VC(5]: Should be clear that this is a sale

Draft

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below. Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be paid under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG),

Commented [VC(6]: Who has reviewed existing indemnities?

Commented [VC(7]: What does this mean?

Commented [VC(8]: OPG is being compensated for taking on this role – how does that factor into the indemnity?

Commented [VC(9]: What role is expected?

Commented [VC(10]: Why it is not clear?

agents (in the case of the IESO), directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Commented [VC(11]: Why is this only for employees – the one above is for directors, officers, employees and agents

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Act prohibit/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil

proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

Commented [VC(12]: Does this indemnity do that?

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to IESO and OPG's respective roles in relation to implementing the

Draft

ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided and to the extent already paid under such insurance, or other indemnification is provided, to the extent the individual is so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the OPG and IESO Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Draft

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

Commented [VC(13]: What is its purpose?

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors and officers do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

Commented [VC(14]: Who has done this analysis? TBS legal?

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the

successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject:	A note on IESO-OFA credit facility
Date:	Monday, December 04, 2017 2:55:17 PM
Attachments:	IESO Facility - BN v6_Clean.docx

Hi Ron,

Pls. see attached. In a separate call attended by EFB staff, Anthony confirmed our understanding. He indicated that they have consulted OPCD.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

IESO FAIR HYDRO PLAN CREDIT FACILITY
INTENDED USE – DISCUSSION WITH ENERGY STAFF

In a discussion with Energy staff [following comments heard in a call to discuss the Change of Law Protection Agreement call on December 1, 2017], Corporate and Electricity Finance Division (CEFD) staff became aware of an additional use of the Ontario Financing Authority (OFA) $2 billion credit facility for the Independent Electricity System Operator (IESO) developed for the implementation of the Fair Hydro Plan (FHP).

For the period of the FHP where the customer bill increases are to be kept to the rate of inflation, the described plan would use the $2 billion credit facility provided by the OFA to cover interest costs and fees charged by the Fair Hydro Plan Trust (OPG Trust) to the IESO [TBC].

CONTEXT

The Independent Electricity System Operator (IESO) requested and put in place a revolving credit facility for an amount of up to $2 billion from the 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 obtained a Lending Directive from the Minister of Finance on June 29, 2017.

- The $2 billion IESO FHP-related facility was requested with an initial term of 5-years plus a contingency of three months (effectively expiring on September 30, 2022).

- The request in part enabled the IESO to have the facility beyond the initial moratorium period of customer bill increases being constrained by the rate of inflation.

In the briefing note outlining CEFD and other OFA staff recommendation to the Minister of Finance, there were three rationales were provided to enact the $2 billion credit facility:

- At the time of initial consideration, it was often discussed that under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset which led to discussions around how it could result in longer than planned IESO draws on the credit facility and a large balance accumulating in the facility.

- In the recommendation, staff referenced the need to allow the IESO to finance short to medium term funding shortfalls in its role in the FHP. It was always anticipated that there would be short and medium term timing differences in funding as mentioned in the Briefing Note as part of the Minister's Directive Package (see the actual wording below):

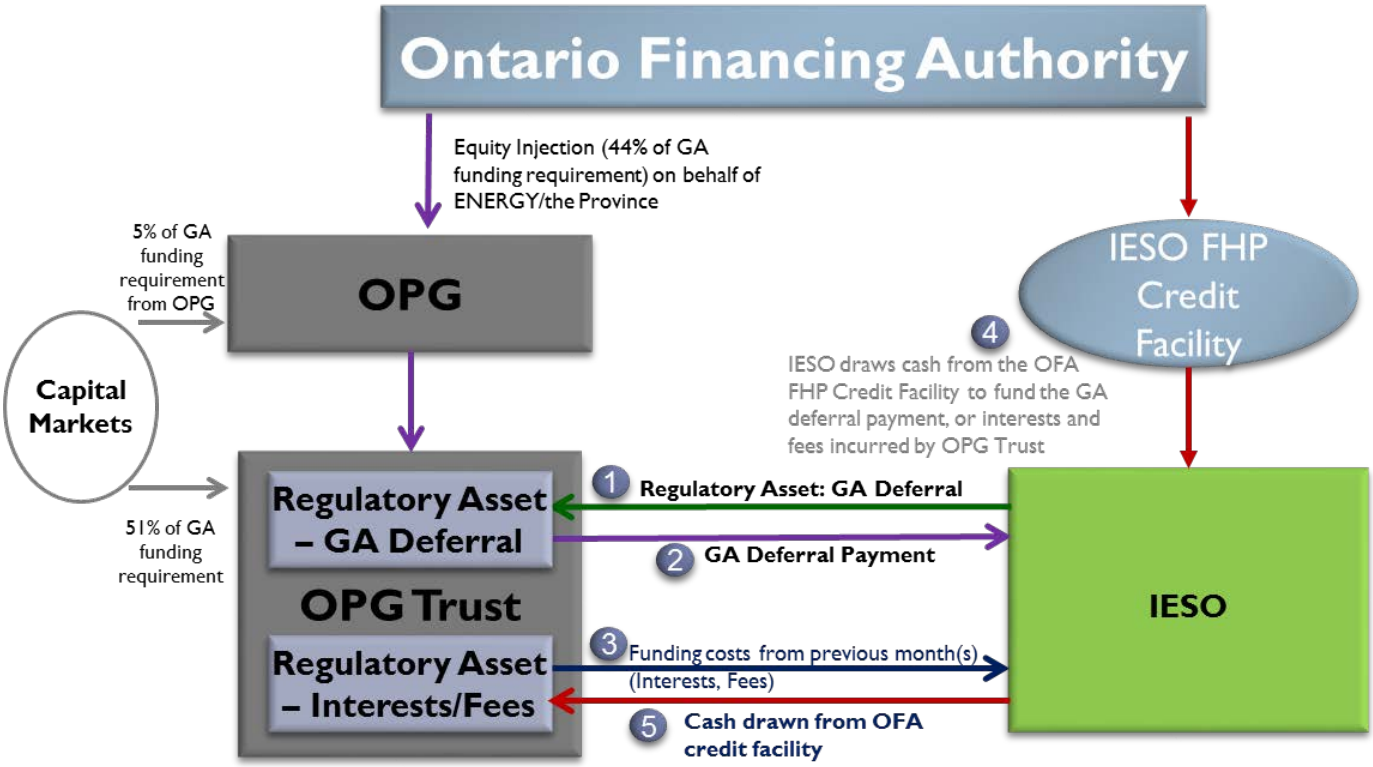
  > *This will help the IESO to fulfil the commitments under the OFHP Act as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.*

- One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.

INTENDED USE OF THE FHP-RELATED FACILITY

As in many policy initiatives, the program parameters continue to evolve for a number of FHP-related items, including the use of the $2 billion OFA facility for the IESO. Energy staff indicated that in order to facilitate the implementation of the FHP, the IESO will likely utilize the $2 billion OFA credit facility to defer the interest and fees component of the global adjustment (GA) deferral for the first 4 years of the FHP when the customer bills are to increase only by the rate of inflation.

See the diagram below for details of how the deferral of the interest and fees would occur in parallel to the deferral of the GA amounts:



1. *IESO calculates the total amount of GA deferral for the month*
2. *OPG pays the GA deferral amount to the IESO*
3. *OPG calculates the total funding costs, i.e. interests, management fees, and etc., for the previous month, and send the invoice to the IESO*
4. *IESO draws cash from the OFA FHP Credit Facility to pay for the funding costs incurred by OPG Trust. IESO could use the credit facility to pay for the GA deferral amount as well in case of a shortfall*
5. *IESO prepares the Regulatory Assets, which consist of the GA deferral amount for the month and payment for the funding costs for the previous month, and sells the Regulatory Assets to OPG Trust.*

ANALYSIS

The main intended use of the credit facility's role to specifically fund interest and fees for the first four years is a new development for the use of the facility. Short to medium term funding shortfalls were, at times, expected to be financed by this facility as the OPG trust is not required to purchase the regulatory asset and there were explicit discussions about potential for market interruptions that lead the IESO to hold on to deferrals related to the GA refinancing. A systemic use of the

facility for funding interest costs and fees for the first four years is a new development/understanding for CEFD staff.

As the borrowing to fund interest and fees would only begin to be paid off after the initial moratorium period, the accumulation of interest and fees in the $2 billion credit facility would lead to decreased room for future GA deferral/borrowing needs. As such there may be a request for an expansion to the credit facility in the future.

OPCD would need to opine on the potential fiscal impacts [TBC] of this funding structure due to the ongoing and cumulative nature of the funding of fees and interest costs via the $2 billion credit facility. Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interests at the end of the moratorium period.

Furthermore, it is unclear how the IESO would pay the interest costs to the OFA for these drawdowns of the $2 billion credit facility, i.e. ratepayer recover on an ongoing basis or be capitalized.

BACKGROUND

MINISTER'S DIRECTIVE

On June 29, 2017, Minister of Finance's Lending Directive authorized 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 also included 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, consistent with the spread for current and past OFA credit facilities for the IESO.

- The credit facility agreement shall be subject to such other terms as the OFA deems appropriate from time to time.

    - This standard clause in the Minister's Directive was utilized recently to allow for changes to the definition of the Permitted Liens and other related sections of the OEFC lending agreements.

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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
    - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.

- 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 ultimately recovered from electricity ratepayers.
    - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If the IESO cannot sell the regulatory asset created under the *Ontario Fair*

Hydro Plan Act, 2017 to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred GA amount.

FHP ACT

- 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 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 right to recover the deferred amounts in the future) to a financing entity.
  - It is anticipated that the regulatory asset will be purchased by the financing entity to be established by OPG (OPG Trust).
  - The cash received from selling the regulatory asset will be used by the IESO to fund the incurred GA shortfall.
  - For the first four years, it [now] appears that part of the deferred amounts related to carrying costs would be funded through IESO's facility from the OFA.

- The IESO had always been expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.
  - Even once the OPG Trust is fully set up to borrow, there is expected to be continued timing differences between the IESO's monthly settlement process when it has to pay generators and when the Trust purchases the asset from IESO.
  - Also, under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which could result in longer than planned IESO draws on the credit facility, and an accumulation of a larger balance in the facility.

OFA FACILITIES FOR IESO

- An existing credit facility between the IESO and the OFA is currently available for $475 million (previously $975 million), which includes support for the current Regulated Price Plan (RPP) program. The IESO has proposed that a separate 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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA-IESO Facility	New Proposed OFA-IESO FHP Facility
Pre-Existing 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**

- The OFA facilities provided to the IESO currently have the intercept provision as required under the OFA's Lending Policy, dated April 16, 2010. The pre-existing $975 million facility (now the $475 million facility) was amended to incorporate the required intercept provision. The intercept provision is intended to provide security to the OFA in its role as a lender to public bodies.

IESO

- 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
December 4, 2017

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim; Shajee Kathirgamanathan; Gavin He
Subject:	ARMC FHP deck
Date:	Friday, June 09, 2017 4:06:45 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v17_clean).pptx

Hi Ron

The attached deck is revised per your edits and comments. Slide 12 is a combination of a slide you had edited to explain the financial structure and the chart which you were wondering if it was needed. We thought it worked to combine the two to help explain the structure. But we can remove chart if you prefer to go without it.

Added some notes to Note pages for equity injection and IESO credit facility slides.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

DRAFT

Fair Hydro Plan
OFA Audit Risk Management Committee Briefing

Corporate and Electricity Finance Division
June 16, 2017

Contents

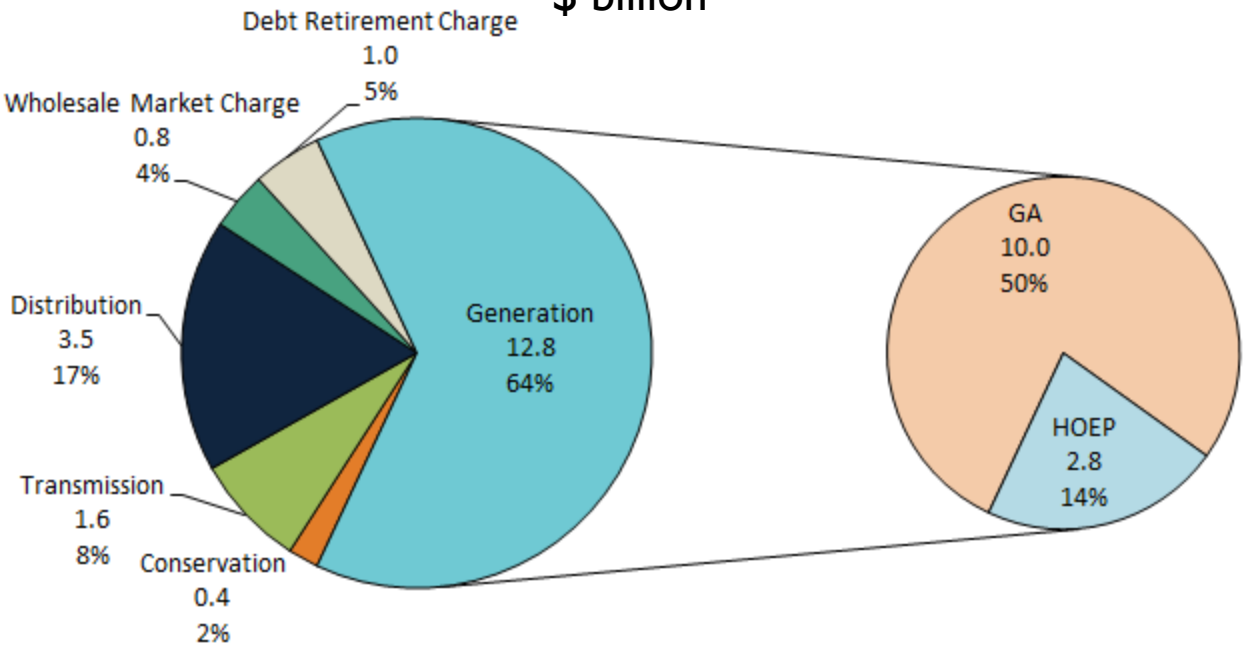
- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks
  - Financial modeling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.

2015 Electricity System Cost

$ billion



DEFINITIONS:

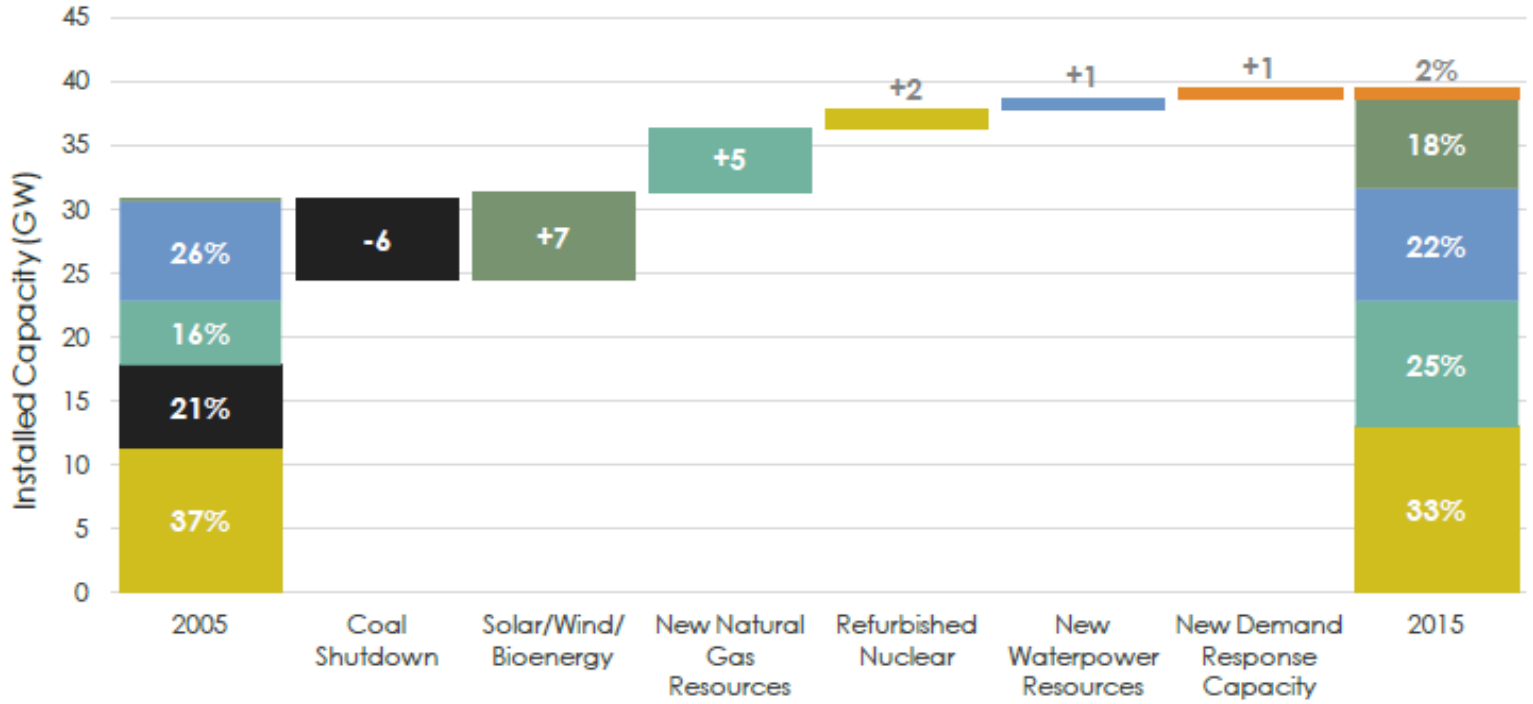
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

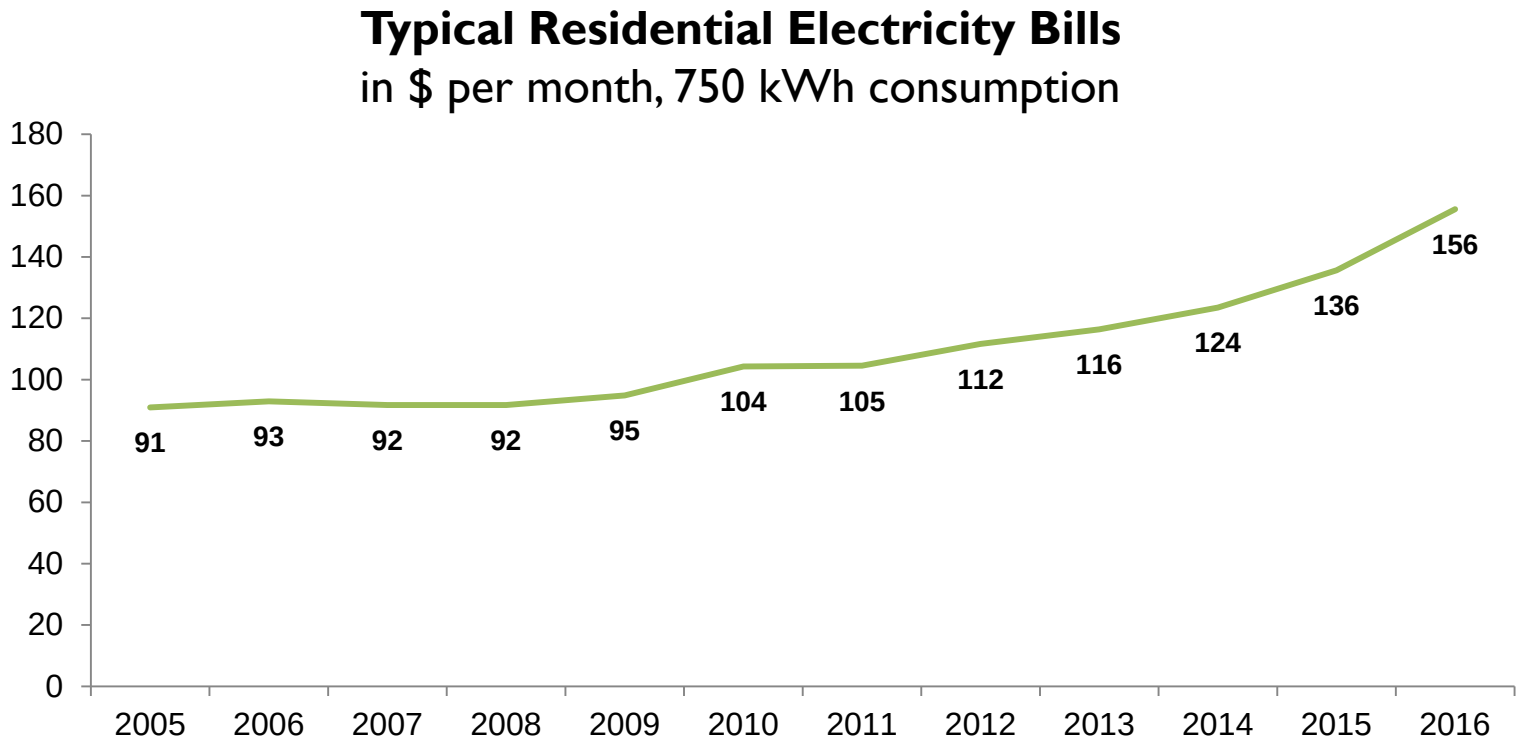
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview: The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, which will lower electricity bills by 25 per cent on average for eligible residential customers. Eligible farms and small businesses will also receive benefits.

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

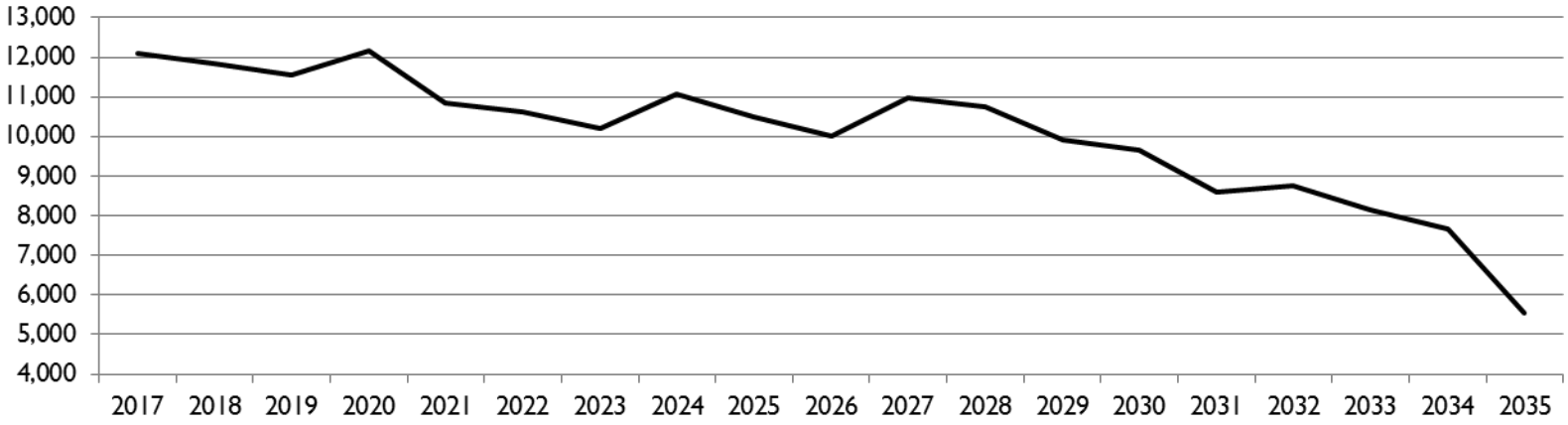
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

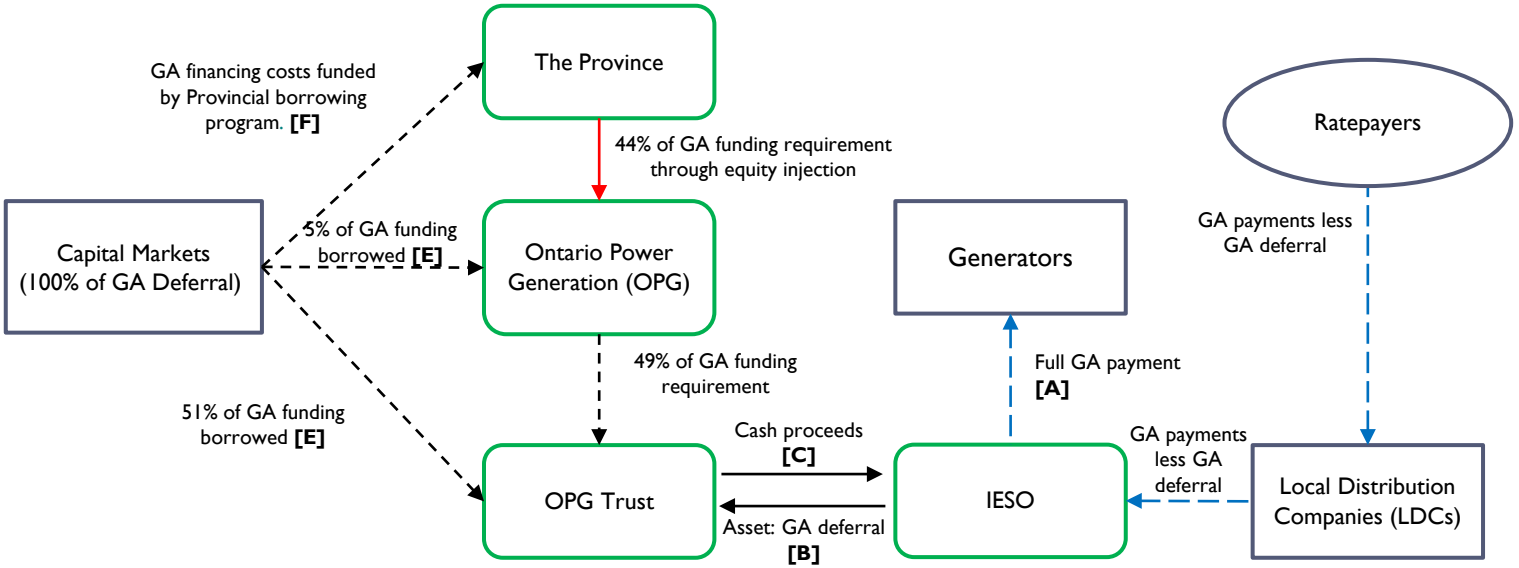
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

GA Financial Structure

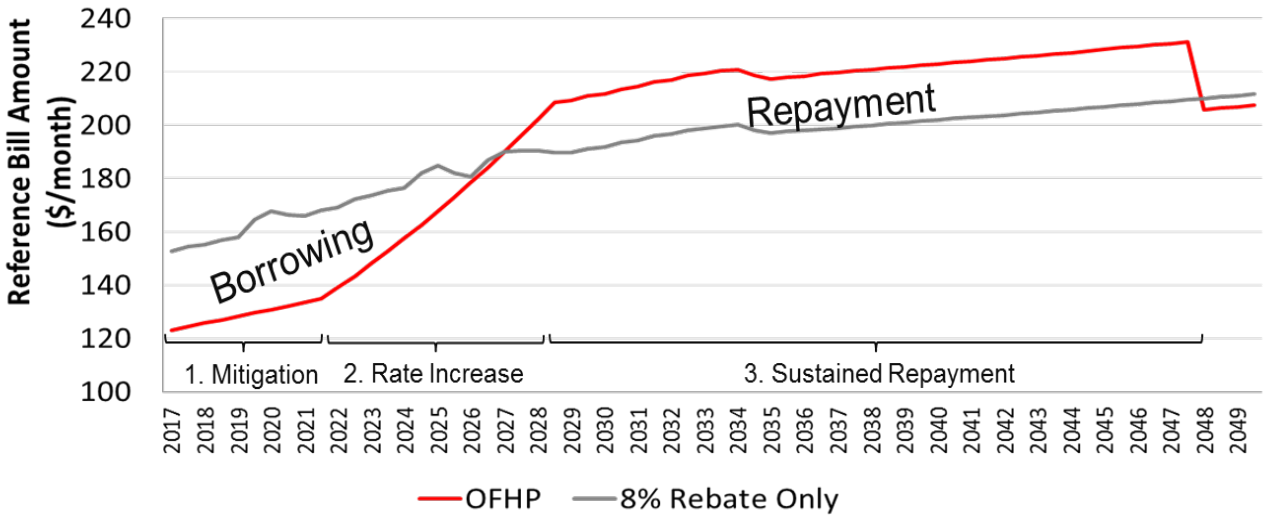
- Through the OFHP, GA costs including refinancing costs, will be recovered from ratepayers, over a longer period of time rather than being government-funded.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power generation (OPG).
- Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices **[A]**. However a portion of the GA will be deferred in order to support the initial 25% reduction (and subsequent adjustments)
  - The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs under the Act.
- Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity **[B]** in return for cash proceeds **[C]**.
- The funding for the financing entity would be raised from the capital markets; directly by the financing entity **[D]** and indirectly from OPG **[E]** and the Province (OFA) **[F]**.



DRAFT

Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see chart below)



Phase 1: Mitigation

- 2017 bill set 25% lower than original projection (does not include 8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

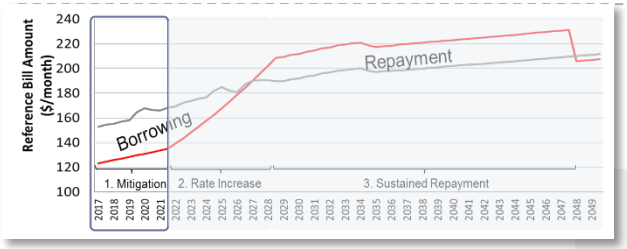
- Bill increases each year such as to avoid exceeding borrowing limit.
- Planned increases projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill remains higher than projected until 2047.
- Difference represents financing repayment.

DRAFT

GA Financing Structure: Fund Flows - Mitigation Phase



Funding OPG Trust

A. The Province borrows 44% of the deferred GA from the market.

B. The Province funnels this amount to OPG through an equity injection.

C. OPG borrows 5% of the deferred GA from the market.

D. OPG lends an amount equal to the 5% and 44% from the market and the Province, respectively, to OPG Trust.

E. OPG Trust borrows 51% of the deferred GA from the market, ending up with 100% of the total deferred GA in cash.

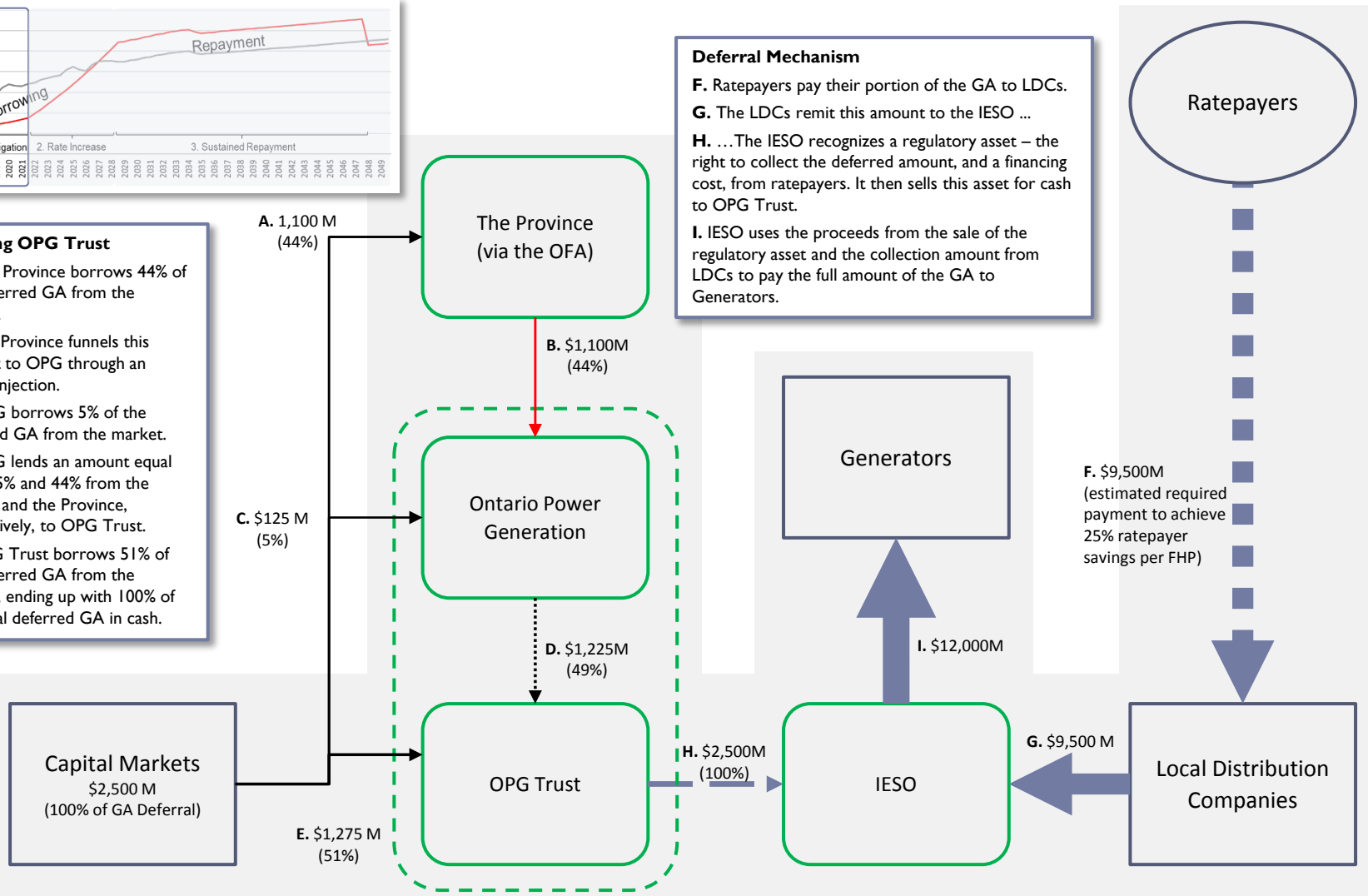
Deferral Mechanism

F. Ratepayers pay their portion of the GA to LDCs.

G. The LDCs remit this amount to the IESO …

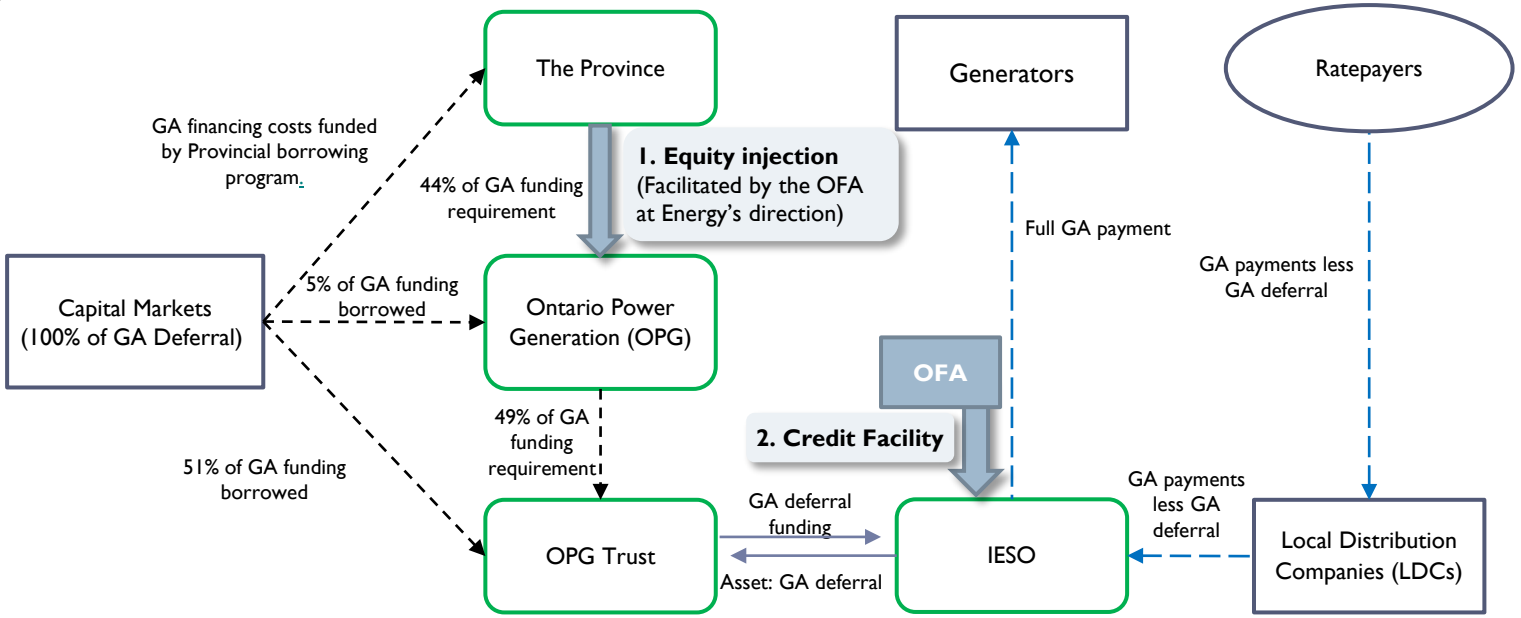
H. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers. It then sells this asset for cash to OPG Trust.

I. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA to Generators.



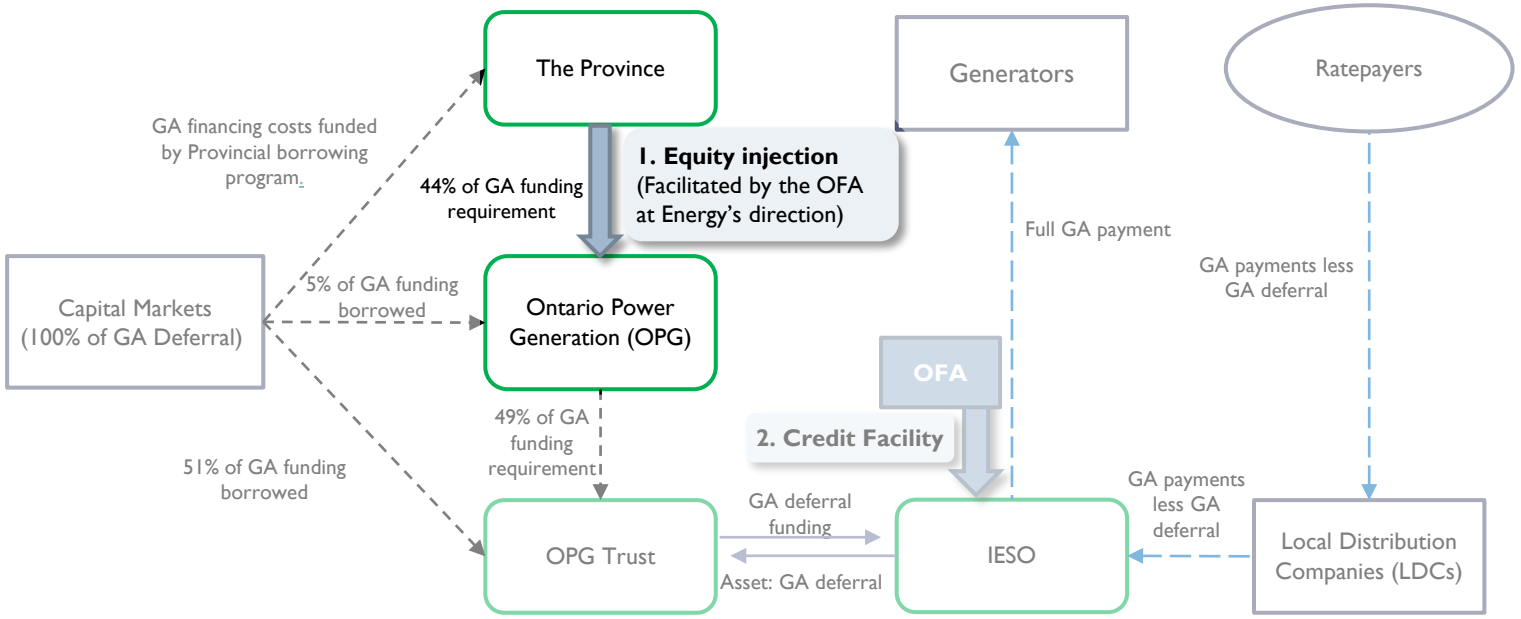
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would be borrowing to support the equity injection.
  2. Implementing a credit facility for the IESO
- The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded.



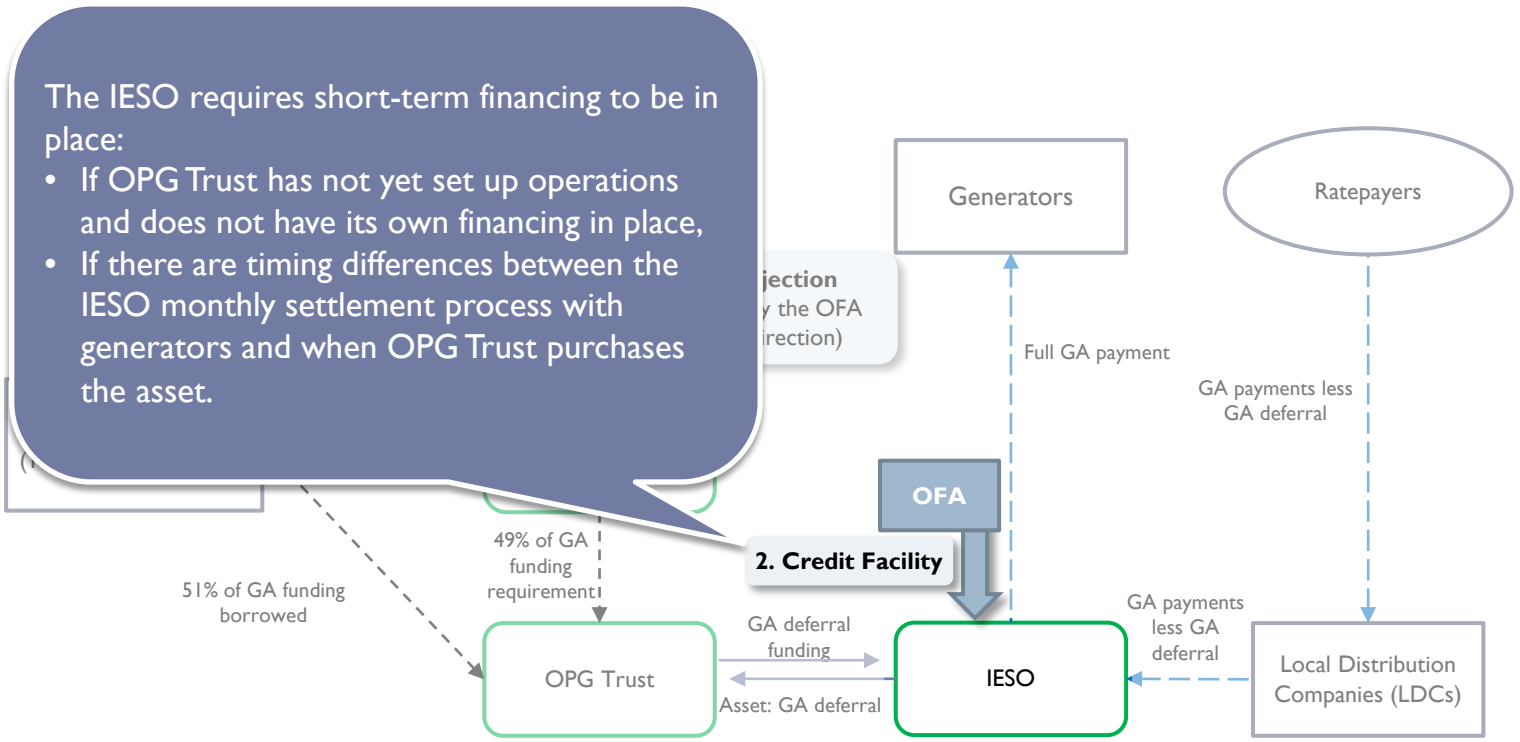
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1B related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which would be
  - offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 allows the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment shortfall.



Risks

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve projected accumulated interest costs, from about $25 bn to $12.7 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

Appendix

DRAFT

GA Financing – Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From: Joan Dougherty
To: Ronald Kwan; Anna Strathy
Cc: Sarah Neville; Gavin He
Subject: Action item from the April ARMC / Board meetings
Date: Wednesday, May 17, 2017 6:17:43 PM

Hi Ron

As a result of discussions at the April ARMC meeting, Bonnie Lysyk suggested that the Board consider obtaining a briefing on the Fair Hydro Plan. Angela Holtham, ARMC Chair, raised it at the April Board meeting and they agreed that they would benefit from a briefing, preferably, at the June 16th meeting. Please give us your feedback at your earliest convenience.

Regards

Joan Dougherty
Ontario Financing Authority
1 Dundas Street West
12th Floor
Toronto, Ontario, M7A 1Y7
Tel: 416-325-8833
Fax2mail: 416-204-6674
Fax: 416-327-9302

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara
Subject:	Approval Package: IESO Treasury Policy 2017
Date:	Wednesday, June 28, 2017 6:50:49 PM
Attachments:	00 - IESO Finance Policy Update June 2017 Reg 280-14.pdf 01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v3.docx 02 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-CEO-DM.docx 03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min_v2.doc 04 - IESO Treasury Policy 2017 - Minister of Finance Approval - Min Response Approval v2.doc 05 - Item 8(iii) BLACKLINED Treasury Policy June 14 2017.pdf 05 - Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy.pdf

---

Hi Ron,

Please find attached the final package for the IESO Treasury Policy.

Regards,
Gavin He

June 15, 2017

Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

The Honorable Charles Sousa
Minister of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON
M7A 1Y7

Dear Minister:

Re: Independent Electricity System Operator ("IESO")
IESO Treasury Policy (version June 14, 2017)

Ontario Regulation 280/14 (the "Regulation"), as amended, prescribes requirements for the IESO regarding its treasury activities. The Regulation requires the IESO to adopt a statement setting out the IESO's investment, borrowing, and financial management policies and procedures (known herein as the "IESO Treasury Policy").

The IESO's Board of Directors approved the attached revised (*black-lined to highlight the changes made*) IESO Treasury Policy on June 14, 2017.

As required by the Regulation, the IESO submits the attached revised IESO Treasury Policy for your review and requests your approval of the same.

Please contact me (905.403.6944), Kimberly Marshall, IESO Chief Financial Officer (416.969.6232), or John Rattray, IESO General Counsel (416.506.2856) for any questions you or your staff may have regarding this request.

Sincerely,

Anthony Martinello
Director, Treasury and Pension Operations

Attachment: IESO Treasury Policy (version June 14, 2017)

cc: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- 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, in the early years of the plan a portion of the Global Adjustment charge to ratepayers will be deferred for recovery to the future and the IESO will incur a monthly funding shortfall.

- The IESO under the OFHP Act has a right to recover the deferred charges (or "regulatory asset"), which is expected to be sold by IESO to a financing entity established by OPG.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.
    - 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 legislation, OPG's SPV is not required to purchase any portion of the regulatory asset.
    - The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.

- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 23, 2017

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A 1Y7

(416) 325-8000

June 27, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: Minister's Approval of IESO's Treasury Policy

Attached for your review and consideration is a memo to the Minister of Finance recommending the Minister of Finance to approve the Independent Electricity System Operator's (IESO) Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the *Ontario Fair Hydro Plan Act, 2017*.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420 million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Attached is a briefing note for your consideration, as well as an approval letter for the Minister's signature. OFA staff are available should you require a further briefing or have any questions.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

Attached for your review and consideration is the Independent Electricity System Operator's (IESO) updated Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
   - This change is a result of the recent passing of the *Ontario Fair Hydro Plan Act, 2017*.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420 million to $500 million, an increase of $80 million exposure per counterparty.
   - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

Anthony Martinello
Director, Treasury and Pension Operations
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Re: IESO Treasury Policy (version June 14, 2017)

Dear Mr. Martinello,

I am writing in regards to your request for approval of the IESO's Treasury Policy approved by its Board of Directors on June 14, 2017.

I am pleased to provide my approval of this policy.

Please continue to work with staff from the Ontario Financing Authority on any future issues pertaining to the IESO Treasury Policy.

Sincerely,

Charles Sousa
Minister

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Director~~Manager~~, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*TBills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara
Subject:	Approval Package: Minister"s Directive for IESO Credit Facility
Date:	Wednesday, June 28, 2017 6:47:38 PM
Attachments:	01 - IESO-OFA - FHP Line of Credit Facility_MinDirective - BN v3.docx 02 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo CEO-DM_v2_Clean.doc 03 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo DM-Min_v2_Clean.doc 04 - Directive IESO FHP 2017 v5.docx

---

Hi Ron,

Please find attached the final package of the Minister's Directive for IESO credit facility.

Regards,
Gavin He

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, consistent with the spread for current and past OFA credit facilities for the IESO.
- 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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.
- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred Global Adjustment amount.

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 right to recover the deferred amounts in the future) 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.
- IESO is expected to need short-term financing to manage initial and ongoing monthly 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, which could result in longer than planned IESO draws on the credit facility.

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA-IESO Facility	**New Proposed OFA-IESO 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

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

Ontario

June 28, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Minister's Directive to OFA to provide IESO a Credit Facility Extension**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister direct the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

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 right to recover the deferred amounts in the future) 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.

IESO is expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.

…2

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.

Attached is a briefing note for your consideration, as well as a Lending Directive for the Minister's signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province's cost of funds plus a twenty-five basis point spread which is consistent with the spread for current and past OFA credit facilities for the IESO, and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Directive to OFA to provide OPA a Credit Facility Extension**

Attached for your review and consideration is a Minister's Directive to the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act").

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 right to recover the deferred amounts in the future) 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.

IESO is expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.

…2

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.

Attached is a briefing note for your consideration, as well as a Lending Directive for the your signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province's cost of funds plus a twenty-five basis point spread which is consistent with the spread for current and past OFA credit facilities for the IESO, and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

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.

../2

- 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:

Charles Sousa
Minister of Finance

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara
Subject:	Approval Package: OPG and IESO Indemnities s.28 Approval Request
Date:	Wednesday, June 28, 2017 6:52:47 PM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - June27- BN_v06_Clean.docx OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo CEO-DM_v5_Clean.doc OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo DM-Min_v5_Clean.doc Ministry of Energy s28 request - response letter_v4.doc 1 - OPG Indemnity OFHP 2017 s 28 Approval.doc 1 - 20170626-OPG Indemnity Agreement - FINAL.DOCX 2 - IESO Indemnity OFHP 2017 s 28 Approval .doc 2 - 20170626-IESO Indemnity Agreement - FINAL.DOCX Signed Memo.pdf 20170626--s.28 business case - IESO and OPG Indemnity OFHP -FINAL.DOCX 20170626-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx

---

Hi Ron,

Please find attached the final package of the section 28 approval for IESO and OPG indemnity agreements.

Regards,
Gavin He

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"), and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of OPG or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- Both IESO and OPG have specifically asked for these indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.
- In order to support the successful implementation of the OFHP Act, it is recommended by the Minister of Energy that the Minister of Finance approve this request.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.

In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity, for example, signing documents on behalf of a financing entity that is a trust at the request of OPG or acting as directors, officers or employees of entities that are carved out of the Indemnity Agreement, where they are doing so in the implementation of the OFHP and are also a director, officer or employee of OPG or any of OPG's subsidiaries.

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected Persons in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity (though to the extent that the Protected Person makes a claim on an indemnity that creates a loss for another Protected Person, such as OPG and its subsidiaries and the IESO, such other Protected Person may make a claim under an Indemnity Agreement). The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Waiver of claim provision

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for wilful misconduct, dishonesty or gross negligence.

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG,

(see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

The Minister of Energy had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing specific Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are currently being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

DESCRIPTION OF RISK AND RISK MITIGATION

The ONFHP is a novel program, and as a financing structure it is the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.
- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance, to the extent already paid under such insurance.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or wilful misconduct.

Although there is a provision in the Indemnity Agreements that provides that a claim relating to the OFHP should initially be made on any indemnity that is already in place from the IESO or OPG for the benefit of their respective directors, officers or employees before making a claim on the Province's indemnity, if the IESO or OPG suffer a loss because they have indemnified such director, officer or employee they would be able to make a claim under an Indemnity Agreement. Thus, the Province would, to the extent such a claim was not covered by an insurance policy, be liable for such a loss of the IESO or OPG.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June 28, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

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

Ontario

June 28, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Section 28 Approval for Indemnity Agreements In Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act* (*FAA*), the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.
- In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Attached is a briefing note for your consideration. Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Section 28 Approval for Indemnity Agreements in Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act (FAA)*, the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.
- In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the Financial Administration Act of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the Financial Administration Act, of the Indemnity Agreements for OPG and the IESO in order to allow them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Thank you again for writing.

Sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-325-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-325-0374

June 29, 2017

TO: **Minister of Energy**

Approval pursuant to section 28 of the
Financial Administration Act

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to Ontario Power Generation Inc., certain of Ontario Power Generation Inc.'s subsidiaries (as set out in the attached form of Indemnity Agreement) and each of their respective directors, officers and employees, substantially in the form set out in the attached Schedule.

Charles Sousa
Minister of Finance

Attachment

EXECUTION VERSION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first written above.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-325-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-325-0374

June 29, 2017

TO: **Minister of Energy**

Approval pursuant to section 28 of the
Financial Administration Act

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to the Independent Electricity System Operator and each of its respective directors, officers and employees, substantially in the form set out in the attached Schedule.

Charles Sousa
Minister of Finance

Attachment

EXECUTION VERSION

INDEMNITY

THIS INDEMNITY effective as of this 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan");

AND WHEREAS the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

    (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

Administration Act (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

June 27, 2017

MEMORANDUM TO: Charles Sousa
Minister of Finance

FROM: Glenn Thibeault
Minister of Energy

RE: Request for section 28 approval of indemnities to the IESO, OPG, OPG's subsidiaries, and respective directors, officers, and employees in relation to the Ontario Fair Hydro Plan

---

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") the forms of indemnity for the IESO, its directors, officers, and employees; and OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*")) and their respective directors, officers, and employees (collectively the "Protected Persons"). Ministry of Finance and Ministry of Energy staff have worked together to review OPG's and IESO's indemnity requests and finalize materials.

OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their activities in carrying out the implementation of the Plan. OPG has also requested this form of indemnity for its subsidiaries (other than any financing entities as defined under the Act) ("Subsidiaries") and respective directors, officers and employees. The Ministry of Energy has committed to providing these indemnities. The Minister of Energy ("Minister") has been briefed and supports this request for approval.

The *Act* enables the implementation of the Ontario Fair Hydro Plan (the "Plan"). Under the Plan, the government has proposed to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the Plan. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the Plan.

The Plan is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG, OPG's Subsidiaries, and IESO in carrying out their roles in implementing the Plan will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations and their directors, officers, and employees may be subject to increased liability specifically due to their roles with the Plan. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The indemnities will provide OPG, OPG's Subsidiaries, the IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the Plan.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified. Should the payment be required, the Ministry will return to TB/MBC for an increase in its allocation.

Approval of these indemnities is requested by June 30, 2017. Failure to obtain approval could jeopardize the implementation of the Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

Sincerely,

Glenn Thibeault
Minister

Enclosures

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective activities in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (not including any financing entities as defined in the *Act*) ("Subsidiaries") and their respective directors, officers and employees.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to OPG and the IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed (June 1, 2017).

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to

investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO,

its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith".

Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under

the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

(b) Description of Risk and any Risk Mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund;

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities;

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in

which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variances in the Indemnities includes a waiver provision whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the Protected Persons' activities in the implementation, or otherwise relating to the ONFHP (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity as OPG's directors/officers/employees, as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity).

However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c) in the IESO Indemnity and section 3(c) in the OPG Indemnity) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 8 in the IESO Indemnity and section 9 in the OPG Indemnity), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG, OPG's Subsidiaries and IESO's (including their respective directors, officers and employees') willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's Subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation (“OPG”). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries (not including any financing entities as defined under the Act) and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by OPG or its subsidiaries (not include the financing entities as defned under the Act), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity’s debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers, members of a committee or panel established by the directors, and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the Ontario Fair Hydro Plan such as the creation of a regulatory asset in relation to the GA financing component of the Ontario Fair Hydro Plan, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers	Providing this indemnity will facilitate IESO in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by the IESO, its directors (including a member of a committee or panel established by the directors), officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors (inlucidng a member of a committee or panel established by the directors), officers and employees; and medium with respect to the corporation itself.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the Act, its respective regulation, and/or any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act). The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

From:	Anthony Martinello
To:	Ken Kandeepan; John Psinas; Ronald Kwan; Mike Manning
Subject:	DRAFT IESO FH credit letter
Date:	Tuesday, May 09, 2017 10:26:24 AM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft.docx

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Program**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the Fair Hydro program (FHP) to reduce electricity prices for consumers in the province. Legislation is expected to be introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority's (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's global adjustment smoothing for a period of several months if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's deferral of electricity prices period plus a few months of contingency (i.e. September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 percent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- $975 million: draws to permit for FHP purposes; and
- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is consistent usage of these facilities we will contact the OFA

for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: Donaldson, Mark (TBS)
To: Ronald Kwan
Cc: Veinot, Cindy (TBS)
Subject: FHP Note -- CFS (DRAFT)_Markup
Date: Thursday, September 06, 2018 7:23:11 AM
Attachments: FHP Note -- CFS (DRAFT)_Markup.docx

Hi Ron – please see responses to your comments. Appreciate the input. Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. The Ontario Rebate for Electricity Consumers~~A rebate~~ (OREC) in the amount equivalent to the~~of~~ 8% provincial portion of the Harmonised Sales Tax (HST) ~~of~~on electricity bills ~~for~~of eligible residential, small business and farm consumers, commencing January 2017, funded by the ~~tax base~~government;
2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the ~~tax base~~government;
3. Reductions, existing and expanded for certain rural electricity consumers, funded by the ~~tax base~~government instead of the rate base;
4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the ~~tax base~~government;
5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the ~~tax base~~government; and
6. An additional reduction in current electricity bills for eligible residential, small business and farm customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25% for residential customers (with differential benefits for other eligible customers), which, unlike items 1 to 5 above, was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the ~~tax base~~government– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the cost ~~amount~~ of the current electricity price reduction to be borne by future ratepayers, and by making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

Commented [RK1]: "tax base" seems an internal colloquialism, not an official publication, vs being funded by general government (or "provincial") revenues (current or future, if borrowed for now).

Commented [DM(2]: I think the intent was to clarify the distinction within the OFHPA between taxpayer and ratepayer w.r.t. its impact on the accounting - to maintain this distinction, could we say "funded by the government from tax revenue"?

Commented [RK3]: Is this part being Minuted now? Is this what ENDM is to return and report back on? Does / could this be reworded to reflect that this refers to reducing the cost, by having it be government borrowing?

Commented [DM(4]: The borrowing aspect doesn't impact the accounting (this is a FS note disclosure). "reducing the cost" I believe is more associated with less than 100% recovery of the GA refinancing

Commented [RK5]: Is this in the other or revised Minute? Can we review that Minute too?

Commented [DM(6]: This will be part of the minute – still being drafted by Operating Expenditure Management Division

DRAFT

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.
- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

Commented [RK7]: The term used elsewhere seemed to be "investment asset" – or is that legislative "jargon" vs accounting jargon – with the latter using "intangible asset"?

Commented [DM(8]: Intangible is an accounting concept.

DRAFT

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

As a result of the decision made on September 12, 2018, the government expects that ~~the~~ one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – ~~8% rebate~~OREC	~~Tax base~~Government	$810	NIL
2 – OESP	Government~~Tax base~~	$20	NIL
3 – Rural rate reduction	Government~~Tax base~~	$325	NIL
4 – First Nations delivery credit	Government~~Tax base~~	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Government~~Tax base~~	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Commented [RK9]: Seems low – is this just the incremental amount? Or does this reflect that the prior ratepayer "surplus" recovery in OESP had to be worked off first, so only a very small amount was government-funded in 17-18?

Commented [DM(10]: Numbers provided by Energy

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From: Ronald Kwan
To: Steen Hume (CAB)
Subject: FHP
Date: Tuesday, September 19, 2017 12:02:09 PM

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: FHP
Date: Friday, June 09, 2017 10:02:02 AM

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

From: Ronald Kwan
To: Steen Hume (CAB)
Subject: FHP
Date: Tuesday, October 10, 2017 1:37:35 PM

Hi Steen,

Would you be able to share the latest projection on the annual GA deferral. The Provincial share of financing is needed to update the Province's interest on debt forecast for fiscal planning and borrowing and debt management purposes.

Thanks,
Ron

From:	John Kim
To:	Ronald Kwan
Subject:	FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date:	Friday, August 18, 2017 10:35:40 AM

Fyi, and we should be pulling together the materials for final review hopefully soon.

From: John Kim
Sent: Friday, August 18, 2017 10:35 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi Bruno, Shajee,

In anticipation, could we start the blue sheet pls?

John

From: John Kim
Sent: Friday, August 18, 2017 10:28 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Ok, great. Thanks Lisa, Malle.

From: Lisa Stein
Sent: Friday, August 18, 2017 9:59 AM
To: John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

I will update the directive to include both credit facilities, as per your instructions. I also have some suggested amendments to the briefing note, which I send via separate email.

Thank you,

Lisa

From: John Kim
Sent: Thursday, August 17, 2017 7:52 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi Malle, Lisa,

Pls. see attached. I haven't yet run this draft by Ron but spoke to him about the direction this afternoon.

Happy to organize a call first thing tomorrow. We are hoping to get it signed by Ron and Gadi tomorrow before Gadi leaves on his vacation.

I left out the second part of Malle's comment (the whereas one) as I wasn't sure how to do that.

Thanks,

John

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: August-17-17 2:02 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi,

I think in the 3rd paragraph it should say the Minister of Finance is entitled to deduct rather than the OFA. If in fact there are some transfer payments to the IESO for the programs mentioned (although there shouldn't be a deduction because they are for the benefit of some others) maybe the whereas in the directive should be modified a bit.

\Malle

From: Lisa Stein [mailto:Lisa.Stein@ofina.on.ca]
Sent: August 17, 2017 1:55 PM
To: Kim, John (OFA)
Cc: Hanslep, Malle (MOF); Harris, Sarah (OFA); Whitfield, Tobias P. (MOF); Russell, Kenneth (OFA)
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From:	John Kim
To:	Ronald Kwan
Subject:	FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date:	Thursday, August 17, 2017 2:14:01 PM
Attachments:	01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx RE 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx.msg

Fyi and Malle's comments.

We followed up on why they left out the $475M

From: Lisa Stein
Sent: Thursday, August 17, 2017 1:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

OFA -- IESO CREDIT FACILITY ~~IES~~MINISTER OF FINANCE DIRECTIVE TO EXEMPT THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE") REQUIRED UNDER THE OFA'S LENDING POLICY

BACKGROUND

The Independent Electricity System Operator ("IESO") requested a revolving credit facility ("the 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"). ~~In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.~~

On June 29, 2017, the OFA received ~~a l~~Lending ~~d~~Directive from the Minister of Finance to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the OFA to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an ~~from the i~~Intercept p~~P~~rovision ~~both~~ in its OFHP Credit Facility agreement with the IESO~~the new $2 billion credit facility to support the IESO's role in the Fair Hydro Plan and the reduced $475 million credit facility~~.

- ~~Note: The Intercept Provision under the OFA's Lending Policy for unsecured lending to a public body requires that, unless exempted by the Minister of Finance [or Treasury Board or Cabinet], the OFA put in place a provision whereby the OFA is entitled to deduct amounts equal to any amounts the public body fails to pay to the OFA under the loan, from money appropriated by the Legislature for payment to the public body.~~

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to provide the~~ese~~ requested credit facility~~ies~~ to the IESO without the inclusion of an ~~an I~~intercept provision in the loan agreement~~under the OFA Lending Policy~~.

CONSIDERATIONS

- ~~This~~ The OFHP Credit Facility will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the Fair Hydro Plan.

Formatted: Font: (Default) Times New Roman

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt, Bold

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [LS1]: After discussion with Ken Russell, we think the directive should be limited to the new credit facility agreement.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [LS2]: This is not a defined term.

Formatted: Font: (Default) Times New Roman, 12 pt

- ~~Under~~ T~~t~~he OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA~~, the following is provided for~~:

  ~~"~~Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.~~"~~

- The ~~intercept in the~~ OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  - The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.
  - ~~o~~

RATIONALE FOR EXEMPTION

- ~~An~~ Including an i~~I~~ntercept p~~P~~rovision in the new OFHP Credit Facility agreement with the IESO would have no practical usefulness in the case of the IESO as it receives no operational funding from the Province of Ontario. While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers. Intercepting these program specific payments, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment of the intent of the OFA's Lending Policy.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the new ~~two revolving~~ credit facility~~ies~~ agreement with ~~to~~ the IESO [per the Minister's Directive signed on June 29, 2017] from inclusion of an intercept provision, as required by the OFA Lending Policy. ~~Intercept provision under the OFA Lending Policy.~~
- ~~[The Intercept Exemption Directive would also exempt any lending to the IESO from the OFA, previously authorized and/or subsequently amended, to be exempt from the Intercept Provision.]~~

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of not having an intercept provision.]

Formatted: Font: (Default) Times New Roman, 12 pt, English (United States)
Formatted: Font: 12 pt
Formatted: Indent: Left: 0.25", No bullets or numbering
Formatted: Font: (Default) Times New Roman, 12 pt
Formatted: Indent: Left: 0.75", No bullets or numbering
Formatted: Font: 12 pt
Formatted: Font: Bold
Formatted: Normal, No bullets or numbering
Formatted: Normal, Indent: Left: 0"
Formatted: Font: (Default) Times New Roman, 12 pt
Formatted: Normal, No bullets or numbering
Formatted: Font: (Default) Times New Roman, 12 pt
Commented [LS3]: Is this even a possibility? I thought there were no funds to intercept.
Formatted: Font: (Default) Times New Roman, 12 pt
Commented [SK84]: This is to ensure both the 2B and 475M credit facilities are covered.
Commented [LS5]: See earlier comment
Formatted: Font: (Default) Times New Roman, 12 pt
Commented [RK6]: What about saying that as IESO is a consolidated entity, and if there were any amounts to intercept, there would be no incremental fiscal impact of not having an intercept provision?
Formatted: Font: 12 pt
Formatted: Font: (Default) Times New Roman, 12 pt

BACKGROUND

The IESO

- 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.
-
- The IESO is a public body for the purposes of CIPA.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 2.13" + Indent at: 2.38", Tab stops: 0.5", List tab

Formatted: Font: (Default) Times New Roman, 12 pt

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 17, 2017

From: Malle Hanslep (MOF) []
To: Lisa Stein [Lisa.Stein@ofina.on.ca]; John Kim [John.Kim@ofina.on.ca]
CC: Sarah Harris [Sarah.Harris@ofina.on.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]; Kenneth Russell [Kenneth.Russell@ofina.on.ca]
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date: Thursday, August 17, 2017 14:02:01

Hi,

I think in the 3rd paragraph it should say the Minister of Finance is entitled to deduct rather than the OFA. If in fact there are some transfer payments to the IESO for the programs mentioned (although there shouldn't be a deduction because they are for the benefit of some others) maybe the whereas in the directive should be modified a bit.

\Malle

From: Lisa Stein [mailto:Lisa.Stein@ofina.on.ca]
Sent: August 17, 2017 1:55 PM
To: Kim, John (OFA)
Cc: Hanslep, Malle (MOF); Harris, Sarah (OFA); Whitfield, Tobias P. (MOF); Russell, Kenneth (OFA)
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

From:	John Kim
To:	Ronald Kwan
Subject:	FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date:	Friday, August 18, 2017 12:21:54 PM
Attachments:	01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

OFA -- IESO CREDIT FACILITY ~~IES~~MINISTER OF FINANCE DIRECTIVE TO EXEMPT THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE") REQUIRED UNDER THE OFA'S LENDING POLICY

BACKGROUND

Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, and December 18th, 2013, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

~~The Independent Electricity System Operator (IESO)~~The IESO had requested a new revolving credit facility ~~("the 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"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

On June 29, 2017, the OFA received ~~a Lending d~~Directive from the Minister ~~of Finance~~ to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the ~~OFA~~Minister ~~of Finance~~to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an ~~from the i~~Intercept p~~P~~rovision ~~both~~ in ~~its OFHP Credit Facility~~ the OFHP Ceredit F~~f~~acility agreement with the IESO, as well as ~~and~~ the ~~reduced $475 million credit facilit~~Original ~~y~~Credit Facility Agreement, both of which may be amended from time to time~~.the new $2 billion credit facility to support the IESO's role in the Fair Hydro Plan and the reduced $475 million credit facility~~. ~~[The existing $975 million credit facility is requested to be reduced to $475 million, in connection with the newly requested $2 billion credit facility.]~~

COMMERCIALLY SENSITIVE AND CONFIDENTIAL ADVICE TO MINISTER

Commented [LS1]: Program area please confirm accuracy of directives.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [LS2]: After discussion with Ken Russell, we think the directive should be limited to the new credit facility agreement.

Commented [SK83]: I understand we are deciding to ensure both credit facilities are covered the Intercept Exemption Directive. Will revert language back accordingly.

Commented [JK4]: A business decision – which I am sure ADM/CEO would support

Formatted: Font: 12 pt

- ~~Note: The Intercept Provision under the OFA's Lending Policy for unsecured lending to a public body requires that, unless exempted by the Minister of Finance [or Treasury Board or Cabinet], the OFA put in place a provision whereby the OFA is entitled to deduct amounts equal to any amounts the public body fails to pay to the OFA under the loan, from money appropriated by the Legislature for payment to the public body.~~

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to ~~provide~~ exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement~~these credit facilitiesies to the IESO without an Intercept provision~~, both of which may be amended from time to time~~under the OFA Lending Policy~~.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

CONSIDERATIONS

- ~~This The OFHP Credit Facility~~This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the ~~Fair Hydro Plan~~OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility [to be amended from the current $975 million facility].

- ~~Under T~~the OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA~~, the following is provided for~~:

  ~~"~~Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.~~"~~

- The ~~intercept in the~~ OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RATIONALE FOR EXEMPTION

- ~~An~~ Including an i~~I~~ntercept p~~P~~rovision in the ~~new OFHP Credit Facility~~ credit facility agreements ~~credit facilities~~ with the IESO would have no practical usefulness ~~in the case of the IESO~~ as the IESO ~~it~~ receives no operational funding from the Province of Ontario.

Commented [LS5]: This is not a defined term.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment of the intent of the OFA's Lending Policy.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the ~~two~~ ~~two revolving credit facilitiesies~~ Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, ~~agreement~~ ~~to the IESO [per the Minister's Directive signed on June 29, 2017]~~ from the OFA Lending Policy requirement to include an intercept provision~~the. Intercept provision under the OFA Lending Policy.~~

- ~~[The Intercept Exemption Directive would also exempt any lending to the IESO from the OFA, previously authorized and/or subsequently amended, to be exempt from the Intercept Provision.]~~

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of ~~not~~ having ~~an~~the ~~i~~Intercept Exemption ~~p~~Provision.]

BACKGROUND

The IESO

- 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.
-
- The IESO is a public body for the purposes of CIPA.

Commented [LS6]: Is this even a possibility? I thought there were no funds to intercept.

Commented [SK87]: There are payments (appropriated to Energy from the legislature) made to the IESO to carry out price mitigation programs (eg. electricity support programs).

Just want to explain here the intent of the policy isn't to claw back/intercept payments specifically designed to assist electricity ratepayers for which the IESO is a conduit.

Commented [JK8]: To Lisa's question - I don't believe that is the intent of requiring an intercept provision.

Commented [SK89]: This is to ensure both the 2B and 475M credit facilities are covered.

Commented [LS10]: See earlier comment

Commented [SK811]: Bullet above modified to include both facilities.

Commented [JK12]: To proceed with the Intercept Exemption Directive for the two facilities only.

Commented [RK13]: What about saying that as IESO is a consolidated entity, and if there were any amounts to intercept, there would be no incremental fiscal impact of not having an intercept provision?

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18~~7~~, 2017

COMMERCIALLY SENSITIVE AND CONFIDENTIAL ADVICE TO MINISTER

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Subject:	FW: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT
Date:	Thursday, June 08, 2017 3:22:03 PM
Attachments:	20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT.docx

Hi,

FYI.

Ron

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: June-08-17 15:17
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT

This is the document I'm referring to-- Cindy

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132, received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "Act). The Act enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), and respective directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 13, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

Commented [VC(1]: To confirm the date requirement

2. RECOMMENDATION

Commented [VC(2]: Message sent to John M – to discuss with Kim

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

Commented [VC(3]: Why as of this date?

3. BACKGROUND

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it

was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

Commented [VC(4]: Alignment with business purpose?

Commented [VC(5]: Should be clear that this is a sale

Draft

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below. Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be paid under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG),

Commented [VC(6]: Who has reviewed existing indemnities?

Commented [VC(7]: What does this mean?

Commented [VC(8]: OPG is being compensated for taking on this role – how does that factor into the indemnity?

Commented [VC(9]: What role is expected?

Commented [VC(10]: Why it is not clear?

agents (in the case of the IESO), directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Commented [VC(11]: Why is this only for employees – the one above is for directors, officers, employees and agents

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Act prohibit/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil

proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

Commented [VC(12]: Does this indemnity do that?

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to IESO and OPG's respective roles in relation to implementing the

Draft

ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided and to the extent already paid under such insurance, or other indemnification is provided, to the extent the individual is so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the OPG and IESO Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Draft

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

Commented [VC(13]: What is its purpose?

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors and officers do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

Commented [VC(14]: Who has done this analysis? TBS legal?

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the

successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinalClean2.docx
Date:	Wednesday, September 06, 2017 1:59:27 PM
Attachments:	DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean_vFinalClean3.docx

Hi Ron,

I believe all the other components are fine but I've updated the Directive version to make it Minister of Finance to sign.

Thanks,

John

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Wednesday, September 06, 2017 1:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinalClean2.docx

HI John,

I see that "Minister of Finance" is in there twice now. I would say remove the first time it is mentioned and leave it below the Minister's name.

Malle

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 6, 2017 12:20 PM
To: Hanslep, Malle (MOF)
Subject: RE: DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinalClean2.docx

Sorry, I believe this should be the version.

John

From: John Kim
Sent: Wednesday, September 06, 2017 12:16 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinalClean2.docx

Hi Malle,

Is the modified signing section appropriate?

We had it as the alternate signing as the Minister was away.

Thanks,

John

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Effective January 1, 2015, the Ontario Power Authority (the "OPA") and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to directives dated December 22nd, 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28th, 2016, the Minister approved and directed the OFA to make loans (the "Advances") to the OPA and the IESO after the Amalgamation from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA and IESO after the Amalgamation to meets its purposes.

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility of up to $2 billion to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

~~Minister of Finance~~

~~Per~~ _____

~~The Honourable Liz Sandals~~

~~President of Treasury Board~~

~~Alternate for the Minister of Finance~~

Charles Sousa

Minister of Finance

From: Ronald Kwan
To: John Kim
Subject: FW: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 6:19:59 PM

Hi John,

FYI. I added in "mid" in the last bullet too.

When do you think you'll hear back from Legal on their comfort on timing? I'd like to get back to Marianne.

Ron

-----Original Message-----
From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-14-17 18:03
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin Pls see below for changes.

Sounds good to me. Thanks Ron.

Sent with BlackBerry Work
(www.blackberry.com)

From: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Date: Wednesday, Jun 14, 2017, 6:01 PM
To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: FW: Draft bullets re s28 timin Pls see below for changes.

Hi Scott,

How about the following?

Ron

· CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

· In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

· CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

· MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

· CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca<mailto:carys.baker@ontario.ca>

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: FW: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 6:01:02 PM

Hi Scott,

How about the following?

Ron

- CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

- In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

- CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

- MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

- CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: FW: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 2:05:44 PM

Hi Ron,

Pls. see attached proposed wording.

Their view is that the first set of Qs provided to Energy Legal require their response. They are concerned about providing any summary version which may muddy the details and nuances in the questions of the first file. I agree with their view.

Thanks,

John

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Wednesday, June 14, 2017 2:00 PM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin Pls see below for changes.

CEFD has prepared a draft briefing related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request. In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well. CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request. CEFD will finalize its briefing note as soon as possible after receiving the responses.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June 14, 2017 1:42 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin

Hi Malle,

Yes, it was to be concise per MO request but was actually worried about that bullet. Would appreciate Toby's review.

MO comment was "just a few bullets" and the attachment was to give a flavour of the Qs we have

posed to Energy.

Thanks,

John

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Wednesday, June 14, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

I think Toby will review but I am wondering why the wording of the questions that we have posed is so much shorter and different from the document that actually went over. I assume that it is a summary of what we have asked but I think it might be missing some important points, like the Fair Plan Act immunity is for OPG employees, not for OPG.

Malle

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June 14, 2017 1:15 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Bruno Amara
Subject: RE: Draft bullets re s28 timin

Pls. use this version.

John

From: John Kim
Sent: Wednesday, June 14, 2017 1:09 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Toby,

Could you take a quick look at the attached and the draft wording in highlight below? This is in preparation for MO to MO call.

Thanks,

John

From: Bruno Amara

Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky

416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Marianne Nguyen (MCYS)
Cc: Jonathan Tekle (CAB); Scott Nelms (ENERGY)
Subject: FW: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 6:45:13 PM

Hi Marianne,

Some bullets, as requested.

- CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

- In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

- CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

- MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

- CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)

Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: FW: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 11:40:20 AM
Attachments: DRAFT s28 Bullets.docx

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT

There are a number of outstanding business issues related to the Ministry of Energy's (Energy) Section 28 request under Ontario's Fair Hydro Plan (OFHP) that are under discussion between the Ministry of Finance (Finance) staff and Energy staff. Main outstanding issues include:

1. MOF staff are looking for concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and for which indemnities are required.
    a. Most of the examples provided or discussed are financing related activities. Are there other types of activities?
    b. Most likely entities/organizations to sue OPG/IESO and members listed above.
    c. What are the situations where someone who might not be acting in good faith and still warrant being covered under the indemnity? [Some wording in the draft materials have raised concerns among MOF staff.]
        i. Electricity Act, 1998 already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith.
        ii. Ontario Fair Hydro Plan Act, 2017 does provide similar protection for OPG.
2. OPG and IESO's corporate mandates will be updated to reflect their participation and role in OFHP. Given that OFHP activities will be reflected in such corporate documents, Energy's submission needs to include narrative on why the indemnities are required especially around the "acting in good faith" issue and where it is argued that the IESO and OPG's participation in OFHP is outside of their corporate responsibilities.
3. As currently proposed, indemnities are to be exactly the same for the IESO and OPG. Should the indemnities be tailored to specific circumstances of the IESO and OPG?
4. Are there any other arrangements, e.g. insurance policies that the IESO and OPG have, that cover these risks?
    a. MOF staff are looking for any other examples of indemnities provided by the IESO and OPG on behalf of members listed above that would be called upon first before the indemnities are called.
    b.
5. MOF staff have requested consistency between the draft materials, i.e. between the business case and the contingent liability table.
6. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations.

From: John Kim
To: Ronald Kwan
Subject: FW: Energy"s PRRT
Date: Tuesday, October 17, 2017 5:48:44 PM

Fyi

From: Lisa Stein
Sent: Tuesday, October 17, 2017 2:00 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi John,

I agree with your interpretation.

Lisa

From: John Kim
Sent: Tuesday, October 17, 2017 1:37 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Energy's PRRT

Hi Lisa and everyone,

Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund.

Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.

One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Tuesday, October 17, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.

James

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 13, 2017 4:49 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
Subject: RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated

through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Francisco Chinchon
Subject: FW: Energy"s PRRT
Date: Tuesday, October 17, 2017 1:56:55 PM

Fyi

From: John Kim
Sent: Tuesday, October 17, 2017 1:57 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi Ken,

From the start, the exemption had been the advocated path. I will keep this interception option open until the decision is made to pursue Minister's directive or when we have that directive signed. We can always walk away from this option.

Thanks,

John

From: Ken Kandeepan
Sent: Tuesday, October 17, 2017 1:44 PM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi John

Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.

It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.

Thanks

Ken k

From: John Kim
Sent: Tuesday, October 17, 2017 1:37 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Energy's PRRT

Hi Lisa and everyone,

Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund.

Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.

One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out, then we would need to look at and potentially open up all existing facilities.

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Tuesday, October 17, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.

James

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 13, 2017 4:49 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)

Subject: RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO

submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Subject:	FW: Energy"s PRRT
Date:	Friday, October 13, 2017 5:21:23 PM

FYI, so this is the other part of my inquiry on this.

From: John Kim
Sent: Friday, October 13, 2017 4:49 PM
To: James Strang (MOF) <James.Strang@ontario.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]

Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>

Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim
Subject:	FW: Energy"s PRRT
Date:	Friday, August 18, 2017 1:30:37 PM

fyi

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD.

For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: FW: Energy"s PRRT
Date: Wednesday, October 18, 2017 10:20:05 AM

Fyi

From: Ken Kandeepan
Sent: Wednesday, October 18, 2017 9:59 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

My meeting with Gadi on this and other issues has been rescheduled to 4PM today so will get back to you immediately after that.

Thanks

Ken k

From: John Kim
Sent: Wednesday, October 18, 2017 9:57 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Ok, thanks….all along this group had recommended the exemption directive option. That said, my advice would be to leave both options open but pls. let us know. I have spoken to Ron as well and he is onside with either approach.

From: Ken Kandeepan
Sent: Wednesday, October 18, 2017 9:46 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Will confirm this AM.

Thanks

Ken k

From: John Kim
Sent: Wednesday, October 18, 2017 9:45 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Absolutely it is Gadi. Do we have his instruction?

From: Ken Kandeepan
Sent: Wednesday, October 18, 2017 9:44 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Thanks John, who is making this decision and shouldn't that be Gadi

Let me know
Ken k

From: John Kim
Sent: Tuesday, October 17, 2017 1:57 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi Ken,

From the start, the exemption had been the advocated path. I will keep this interception option open until the decision is made to pursue Minister's directive or when we have that directive signed. We can always walk away from this option.

Thanks,

John

From: Ken Kandeepan
Sent: Tuesday, October 17, 2017 1:44 PM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Hi John

Based on a conversation with Gadi, any solution that continues with the intercept provision will most likely be unacceptable from OPG's perspective. They are concerned that despite the intercept being toothless on a practical basis it may send the wrong message to DBRS as it assess the credit-worthiness of the OFHP debt.

It appears that the only solution is have the Minister sign an exemption and we should focus on getting that in place.

Thanks

Ken k

From: John Kim
Sent: Tuesday, October 17, 2017 1:37 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Energy's PRRT

Hi Lisa and everyone,

Along with comments from Ken over the weekend, just circling everyone in on the latest information from TBS. Pls. advise if your assessment changes but to me, TBS appears to be advising that Green ON Fund is not IESO's operation expense/allocation but allocation from MOECC to Green ON Fund.

Also, IESO staff have thus far signalled positively on the letter agreement. We are potentially looking about 2 days to conclude the process.

One caveat is that OPG is requesting that the trust be given first priority/security over all IESO assets. While the issue is still being discussed, if this is to proceed, the IESO will have to amend its current facilities. I would consider this almost as a separate issue in that if the scenario plays out,

then we would need to look at and potentially open up all existing facilities.

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Tuesday, October 17, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Energy's PRRT

John, I checked with our MOECC analyst, Green ON Fund is an agency of MOECC and is flowing funding to IESO.

James

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 13, 2017 4:49 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara; He, Gavin (OFA)
Subject: RE: Energy's PRRT

Hi James,

The Green ON Fund…am I correct to think that this is also not part of IESO's operating expense/allocation? As for the items below (for Energy), it is a program expense facilitated through the IESO?

Thanks,

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: FW: FHP credit facility agreement - intercept
Date: Wednesday, September 20, 2017 4:48:48 PM

Fyi. I believe the key is the buy-in from Energy. IESO will go along with this approach.

John

From: Sarah Neville
Sent: Wednesday, September 20, 2017 4:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: FHP credit facility agreement - intercept

Great John, thanks.

I think we can convey in any meetings that the agreements can move quickly as long as everyone agrees to add the intercept provision.

Sarah

From: John Kim
Sent: Wednesday, September 20, 2017 4:42 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: FHP credit facility agreement - intercept

Hi Sarah,

I agree that we should aim for a policy level call tomorrow.

In my call with IESO staff, they expressed that they understood the rationale behind the approach, along the lines of no substantive issue as there is no appropriation here. At least the IESO staff fully understood that point. They do want this facility in place asap so it would not surprise me if they expressed frustration around the proposed approach and the delay.

As mentioned in my earlier email, this will be brought up potentially at tomorrow's meeting.

Thanks,

John

From: Sarah Neville
Sent: Wednesday, September 20, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: FHP credit facility agreement - intercept

Hi John –

Toby from MOF Legal just called Lisa. Tom McKinley, counsel from MOE reached out to him in response to your memo to find out what the rationale was for the memo, apparently IESO reached out to Energy and expressed concern about what was going on.

I think it may be prudent to arrange for a policy level call tomorrow to provide reassurance that there is no substantive issue here, but in the absence of a directive we require inclusion of the intercept provisions. Notwithstanding that there are currently no appropriations. Once this is done the loan agreement can be finalized without further delay.

I've copied Anna given your earlier heads up to her. Please let me know how you would like to proceed.

Sarah

From: Lisa Stein
Sent: Wednesday, September 20, 2017 4:23 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: FHP credit facility agreement - intercept

Hi Sarah and John,

Please note that I will be away until Monday. I've provided Sarah Neville with a draft version of the agreement containing intercept provisions. In the even that this matter moves forward in the next couple of days, please contact Sarah.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority

416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara; Shajee Kathirgamanathan; Gavin He
Subject:	FW: FHP deck
Date:	Wednesday, June 07, 2017 8:24:06 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v15).pptx

Hi Ron,

Pls. see attached draft deck.

Thanks,

John

DRAFT

OFA Audit Risk Management Committee
Fair Hydro Plan Briefing

Corporate and Electricity Finance Division
June 16, 2017

DRAFT

Contents

- Overview
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks
  - Financial modeling assumptions
  - Market risks around OPG Trust
  - Extended use of IESO credit facility
  - Accounting Risk
  - Constitutional Risk
  - Provincial Guarantees
- Outstanding Issues

Overview of the Fair Hydro Plan

- On May 31, 2017, the Government passed the *Fair Hydro Act, 2017*, that will lower electricity bills by 25 per cent on average for eligible residential customers.
- The measures that make up the 25 per cent average reduction include:
  - Refinancing a portion of the Global Adjustment (GA) to spread the cost of Ontario's electricity investments over the expected lifecycle of the generation infrastructure assets.
  - The eight per cent rebate equal to the provincial portion of the HST that took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.
- The OFA staff in various divisions have been involved in the implementation of the GA financing mechanism.

Overview of the Fair Hydro Plan (cont'd)

- Other measures that make up the Fair Hydro Plan include:
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers in the manufacturing and greenhouse sectors with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - improve energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

Global Adjustment Financing

- The purpose of the Global Adjustment refinancing is to
  - To ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - To recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - To align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Considerations for GA Financial Structure

- Government's desire for GA refinancing to be consistent with current policy whereby electricity costs are recovered through ratepayers
- A financing structure was developed whereby OPG would administer GA deferral financing, through a financing entity with the potential ability to consolidate the activity and accounting within OPG
- The Independent Electricity System Operator (IESO) would sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds.
- The financing entity funding would be raised from capital markets, directly by the financing entity and indirectly from OPG and the Province (OFA)
- Ontario Electricity Financial Corporation is not involved based on its traditional focus on providing financing for historic debt.

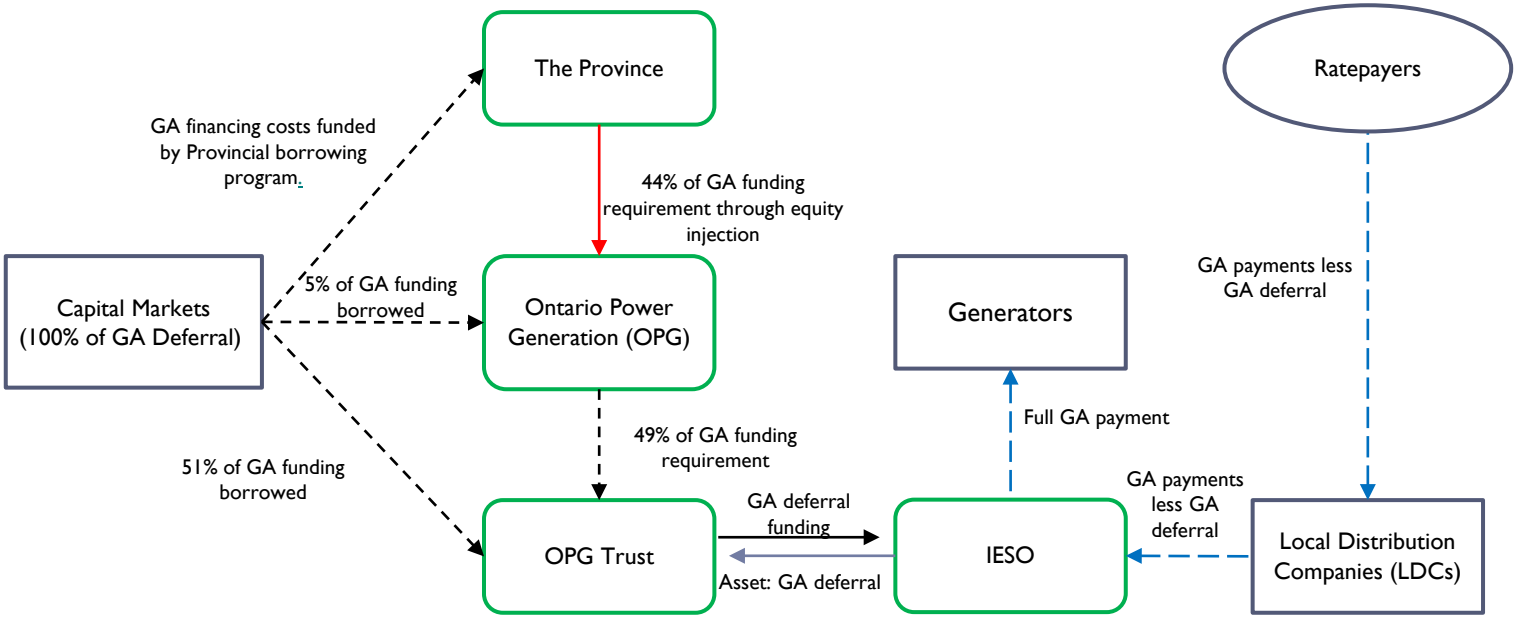
Financing Structure Requires Key Financing and Accounting Objectives to be Achieved to be Successful

- Ability to Finance the GA deferral
- Ability to Consolidate the financing entity into OPG
- OPG to maintain its status a government business enterprise including
- Financing entity ability to recognize "right to collect" as an intangible asset.
- OPG to maintain its status a government business enterprise

GA Financing Structure

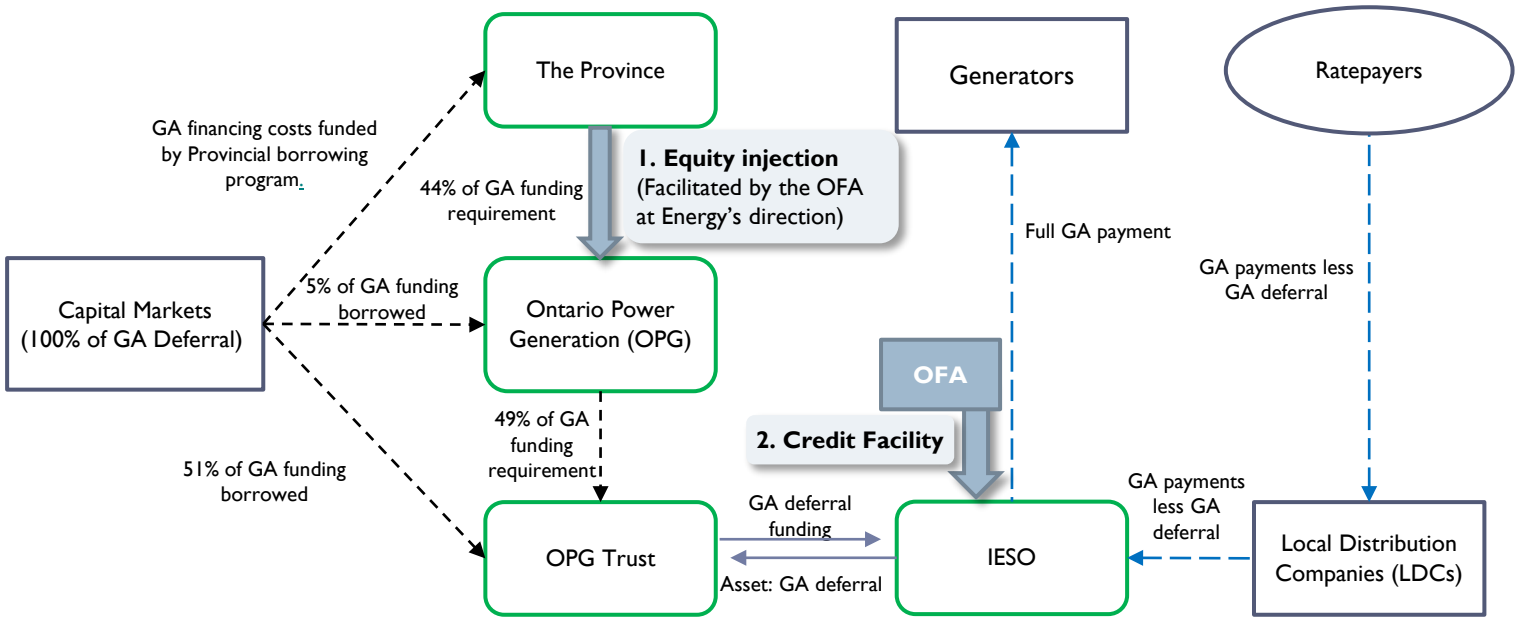
The diagram below outlines how the refinancing of GA would be implemented:

- OPG administers GA deferral financing, through a financing entity (OPG Trust)
- The Independent Electricity System Operator (IESO) would sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds.
- IESO uses these cash proceeds plus GA payments from ratepayers to pay Generators.
- The financing entity funding would be raised from capital markets directly and through OPG. OPG in turn raises funding directly through capital markets and through an equity injection from Province.



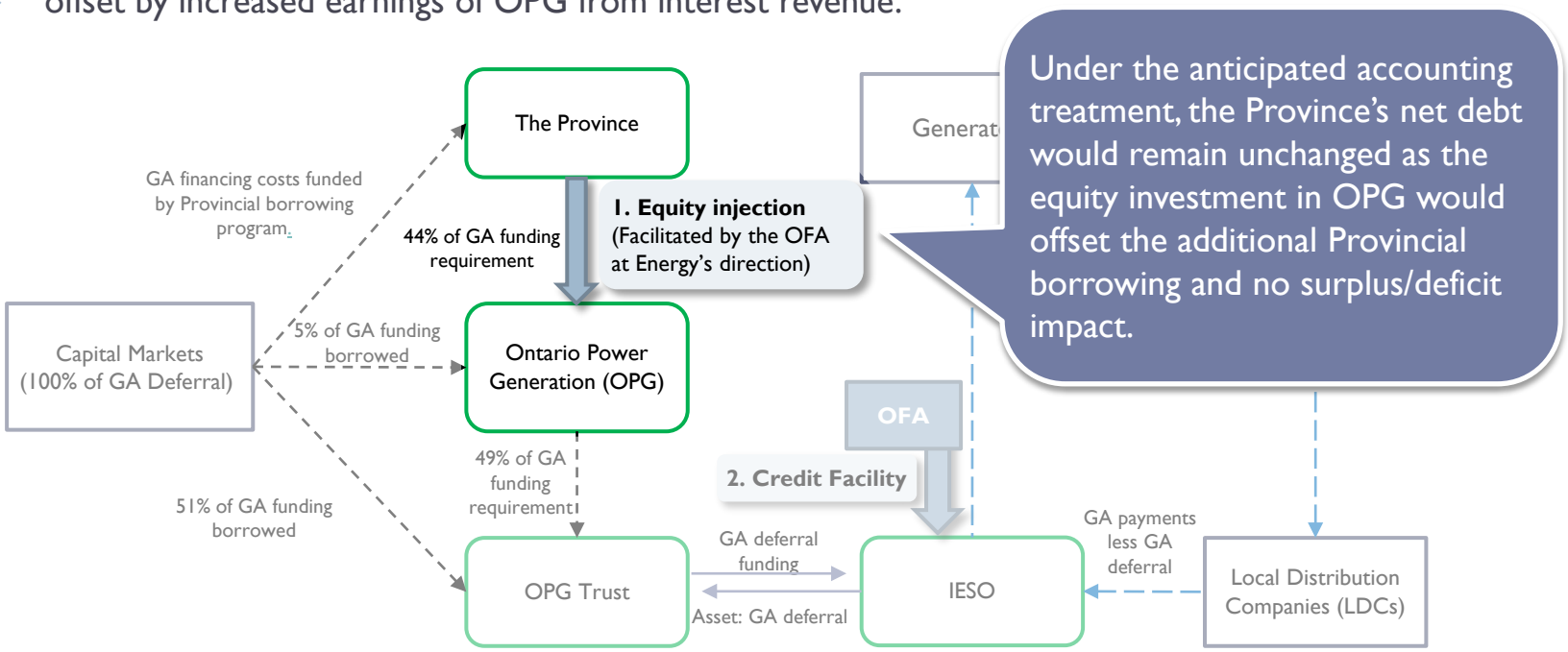
OFA Involvement with FHP Implementation

- The Ontario Financing Authority has been involved in two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation at the direction of the Ministry of Energy
  2. Implementing the short term credit facility for the IESO



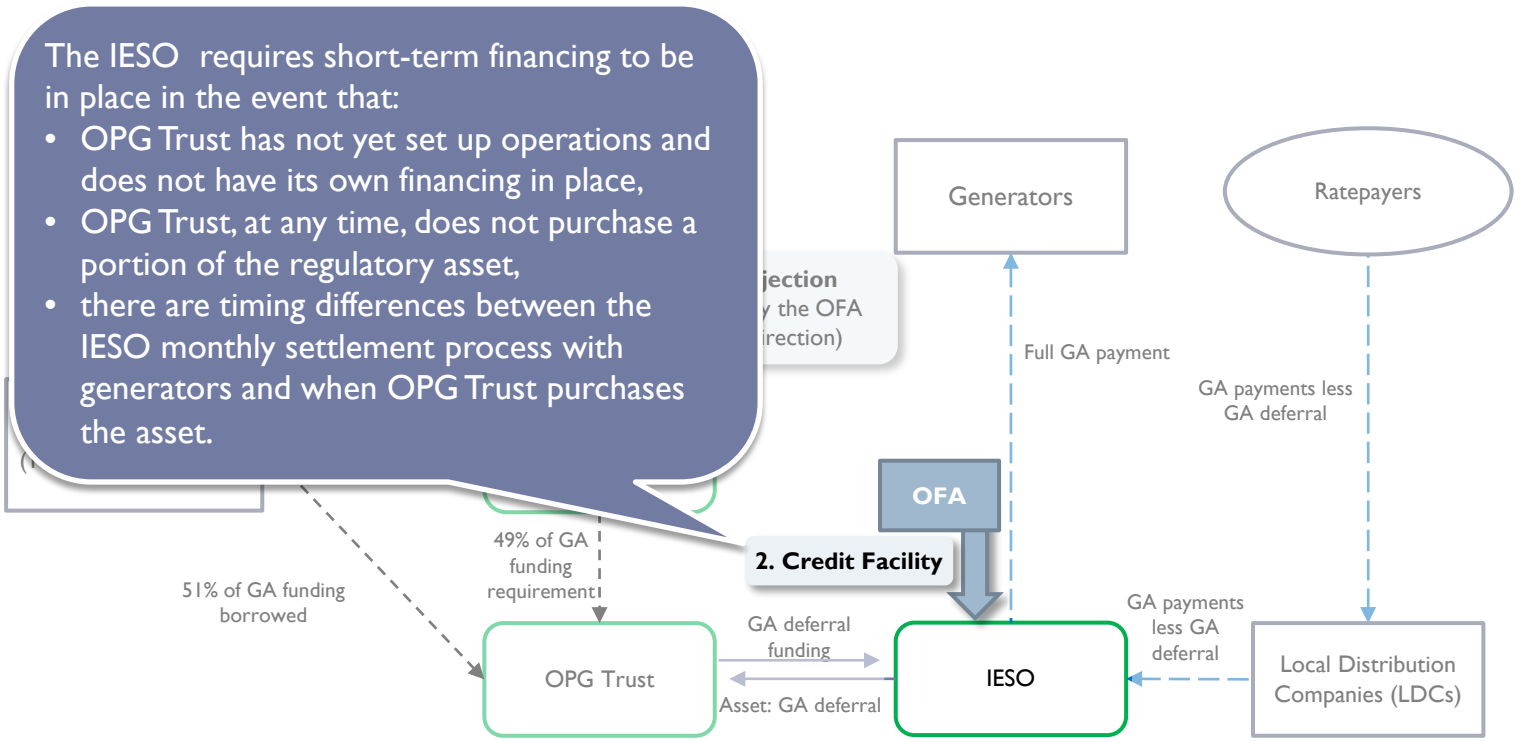
1. Equity Injection

- The 2017 Budget includes an investment operating asset of $1.1B related to the Province's equity injection to OPG, enabling the OPG Trust to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would:
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt which would be
  - offset by increased earnings of OPG from interest revenue.



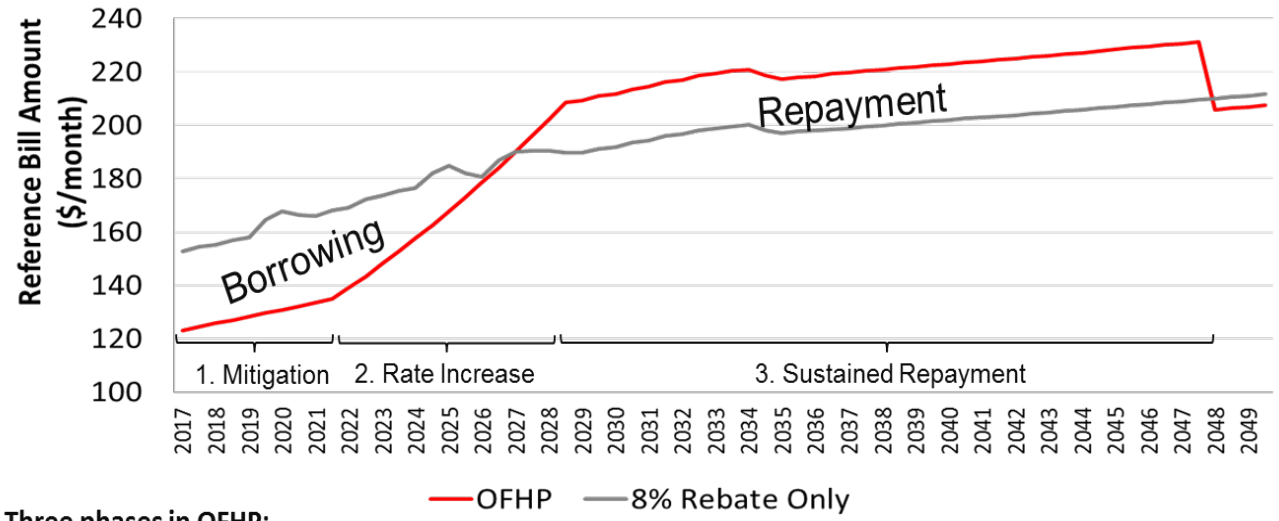
2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 allows the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment shortfall.



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see chart below)



Three phases in OFHP:

Phase 1: Mitigation

- 2017 bill set 25% lower than original projection (that did not include 8% HST rebate)
- Increase in bill capped to 2% per year until 2021

Phase 2: Rate Increase

- Bill **increases 6.3% each year** to avoid exceeding borrowing limit of $28B
- Planned increases end in 2028 when sustained repayment starts

Phase 3: Sustained Repayment

- Bill remains **10.4% higher** than projected with 8% rebate until 2047
- Difference represents financing repayment
- Total interest paid: **$26.2B**

Risks

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are based on a model incorporating key assumptions including interest rates and consumer electricity demand.
- Variances from these key assumptions could affect refinancing costs, the refinancing period, peak interest costs etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - CEFD estimates, for example that a 1.5 percentage point lower interest rate assumption would halve projected accumulated interest costs

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers

Risks (cont'd)

Accounting Risk Around Proposed Financial Structure

- Under the proposed financing structure, GA refinancing transactions would have no impacts on either the Province's net debt or on surplus/deficit positions
- The proposed legislation was conditionally supported by accounting advisers to government agencies
- The Auditor General of Ontario has raised concerns regarding the appropriateness of reporting rate regulated assets on the IESO's books under public sector accounting standards, which may lead to a qualified audit opinion on the consolidated financial statements of the Province.
- If the proposed financial structure and accounting treatment is not implemented, there would be a negative fiscal impact reflecting the GA deferral costs including interest. The fiscal impact could be up to a projected $2.5B in 2017-18 and rising over the subsequent three years.

Risks (cont'd)

Market Risks around OPG financing entity borrowing:

- Credit rating agencies may perceive OPG SPV borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing.

- The proposed financing structure will be reviewed by credit agencies with respect to OPG SPV borrowing in capital markets. Depending on assessment, there may be an impact
  - on interest rates for OPG borrowing
  - the amount of equity/funding the province may need to provide
  - and level of provincial assurances (e.g. provincial guarantee)
  - OPG SPV ability to finance.
    - If the Trust can't raise the full funding requirements, additional cash injections would be required.
    - If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047.

Risks (cont'd)

Extended use of IESO credit facility:

- It is still possible that the full value of the regulatory asset may not be purchased. In such cases, the IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

- Providing a credit facility for the IESO to manage while GA deferrals are pending sale, could result in fiscal plan implications if GA deferrals remain on the IESO's books at the Province's fiscal year-end.
  - The IESO is consolidated onto the Province's books.

Risks (cont'd)

Constitutional Risks

- There is a constitutional risk related to the matching of clean energy costs and benefits over time.
  - If the proposed financing plan encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the proposed Clean Energy Adjustments would be deemed unconstitutional taxation.

- To mitigate this risk, the legislation requires the Minister of Energy to estimate a "fair allocation amount" by estimating clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

- This may present a challenge, especially from 2018 to 2021, where annual increases in bills are subject to caps. Additional borrowing/ provincial funding may be required.

DRAFT

GA Financing – Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		GA Financing Impacts (2017-18)
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

DRAFT

GA Financing – Impact on Surplus / Deficit*

Province of Ontario - Consolidated Statement of Operations

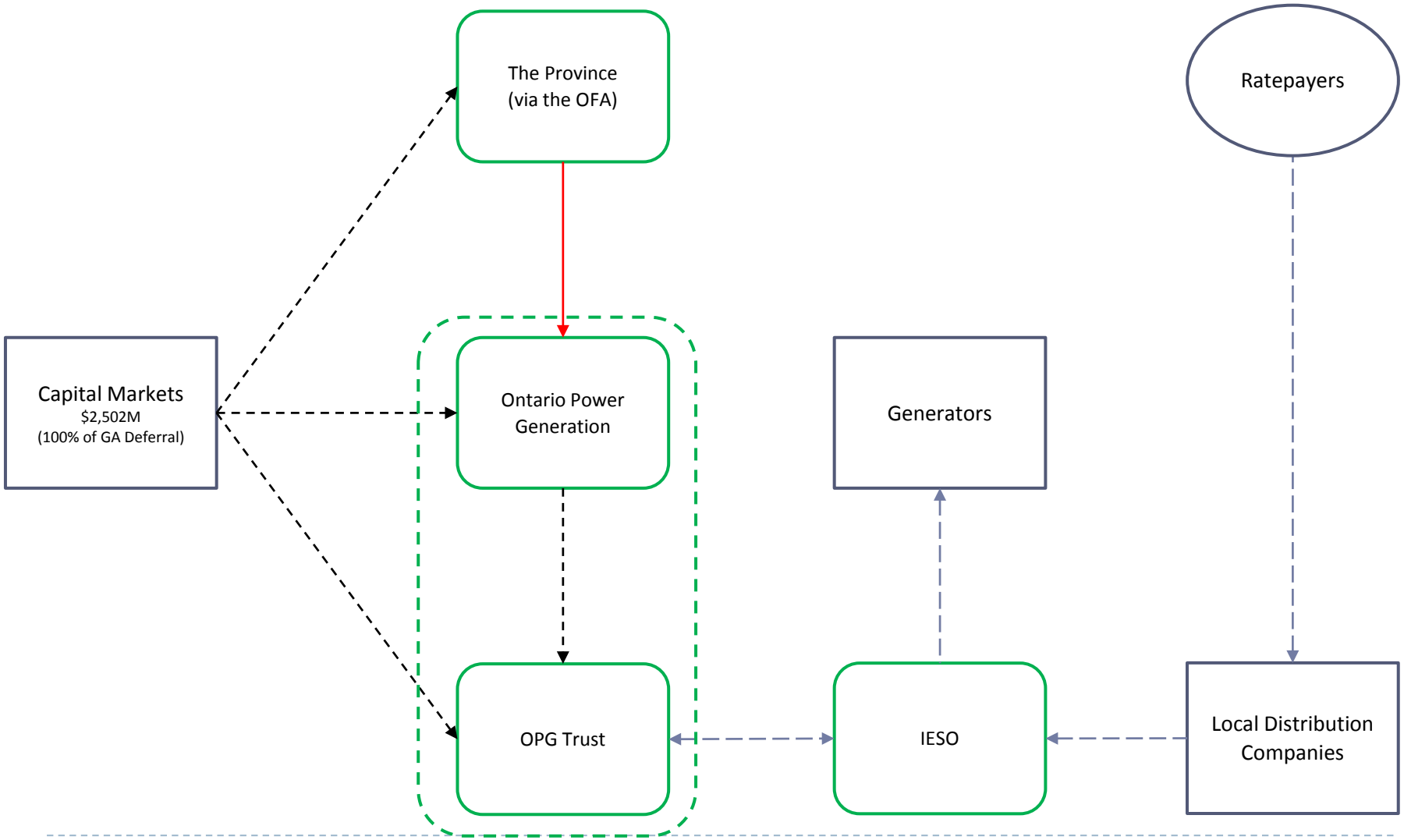
($ Millions)	2015-16	GA Financing Impacts (2017-18)
Revenue		
Personal Income Tax	31,141	
Sales Tax	23,455	
Corporations Tax	11,428	
Education Property Tax	5,839	
Employer Health Tax	5,649	
Ontario Health Premium	3,453	
Gasoline and Fuel Taxes	3,210	
Other Taxes	7,643	
Total Taxation	91,818	
Transfers from Government of Canada	22,857	
Income from Investment in Government Business Enterprises	4,909	**55**
Other	8,793	
	128,377	
Expense		
Health	51,067	
Education	26,588	
Children's and Social Services	15,555	
Environment, Resources and Economic Development	12,612	
Interest on Debt	10,967	**55**
Post-Secondary Education and Training	7,634	
Justice	4,549	
General Government and Other	4,434	
	133,406	
Reserve	–	
Annual Deficit	(5,029)	**0**

* Includes only interest / principal payment impacts. Excludes potential returns on equity injections.

Note: Assuming a 5% rate of interest.

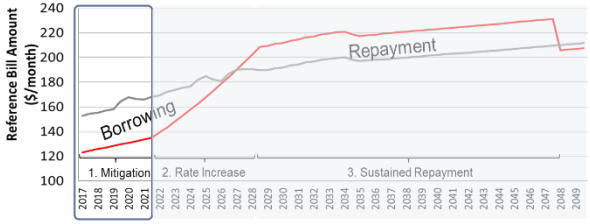
- Increased OPG revenue from equity injection and GA financing.
- Increased interest costs for borrowing required for equity injection
- No annual surplus / deficit impact

GA Financing Parties Involved



DRAFT

FHP Fund Flows - Mitigation Phase



Funding OPG Trust

A. The Province borrows 44% of the deferred GA from the market.

B. The Province funnels this amount to OPG through an equity injection.

C. OPG borrows 5% of the deferred GA from the market.

D. OPG lends an amount equal to the 5% and 44% from the market and the Province, respectively, to OPG Trust.

E. OPG Trust borrows 51% of the deferred GA from the market, ending up with 100% of the total deferred GA in cash.

Deferral Mechanism

F. Ratepayers pay their portion of the GA to LDCs.

G. The LDCs remit this amount to the IESO …

H. …In exchange, the IESO is allowed to recognize a regulatory asset – the right to collect the deferred amount of $2,500M from ratepayers. It then sells this asset for cash to OPG Trust.

I. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA to Generators.

Ratepayers

A. 1,100 M (44%)

The Province (via the OFA)

B. $1,100M (44%)

Generators

F. $9,500M (estimated required payment to achieve 25% ratepayer savings per FHP)

C. $125 M (5%)

Ontario Power Generation

D. $1,225M (49%)

I. $12,000M

Capital Markets
$2,500 M
(100% of GA Deferral)

E. $1,275 M (51%)

OPG Trust

H. $2,500M (100%)

IESO

G. $9,500 M

Local Distribution Companies

Outstanding Business Issues

1. Provincial Support Agreement
2. Payments in Lieu of Taxes (PILs) Exemption
3. Fair Hydro Plan – Master Subscription Agreement Term Sheet (Equity Injection Process)
4. Management Fees
5. Subordinated Debt Loan Agreement
6. IESO – Increased OFA Credit Facilities
7. OPG Indemnity

From: Ronald Kwan
To: John Kim; Bruno Amara
Cc: Gavin He; Deena Padamadan
Subject: FW: FHP
Date: Friday, June 09, 2017 10:32:19 AM

Hi All,

FYI, and timing TBD.

Ron

From: Ronald Kwan
Sent: June-09-17 10:23 AM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Subject: RE: FHP

Hi Scott,

Good idea on the briefing.

Timing depends on a couple things. I was a little surprised on the MO request for a briefing on the credit facility, as it's quite straightforward, but that submission needs to be signed by Thursday (CO has the ADM-approved version, but we need a DM and Minister signed version for LRC). If we can get Marianne comfortable with just doing that through a Minister's signing meeting, that would provide more timing flexibility.

Timing could also depend on when the indemnity is actually needed too.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-09-17 10:05 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: FHP

Good idea. Perhaps we can look at something in the later part of June so we can bring all of the various business items to his attention and get sign off on relevant pieces at the same time. Does that make sense?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 9, 2017 10:02 AM
To: Nelms, Scott (MOF)
Subject: FHP

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Subject: FW: FHP
Date: Tuesday, September 19, 2017 1:16:15 PM

Hi John,

FYI.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:27:13 PM

Fyi, I think Toby at first glance supports my read. I wouldn't hold it to him though.

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, October 26, 2017 4:25 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

John – I think you are right. I hadn't had a chance to review that document yet – and frankly wasn't sure what was happening on the OFA loan to IESO so wasn't focussed on it, but I think that might help with the issue.

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 26, 2017 4:19 PM
To: Whitfield, Tobias P. (MOF)
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi Toby,

Don't mean to just focus on my own stuff first but isn't the Section 3.1(a) saying that what we've been discussing for the Intercept Provision is excluded?

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, October 26, 2017 1:55 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>; Anis Hirani <Anis.Hirani@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Hresa Gavaris <Hresa.Gavaris@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

1 – Master Transfer and Servicing Agreement;
2 – IESO Security Agreement;
3 – Master Trust Indenture; and
4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

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: 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]

TORYS LLP[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

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Tekle, Jonathan (MOF)
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: Fair Hydro Regs/Bundle
Date:	Wednesday, June 21, 2017 8:57:42 AM
Attachments:	RE June 27 Cabinet Binders.msg FHP - IESO Borrowing Requirements - June 27 LRC - DM and Minister signed (June 20 2017).pdf

Hi Ron,

Hope all is well!

ECO has bundled the MOF and Energy's Fair Hydro items - now tracking DTC although originally scheduled for the June 27 LRC.

Energy Regs won't be ready until Monday. Our item was approved yesterday late afternoon. Attached for your records.

Let me know if you have any questions.

Cheers,
Jonathan

From: McLean, David (MOF)
Sent: June 20, 2017 9:29 PM
To: Young, Gwendolynne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: FW: Fair Hydro Regs/Bundle

Gwen - see below. Can you please flag for the fine people in GBESI?

Jonathan - please let Ron Kwan and Gavin know.

Sent with BlackBerry Work
(www.blackberry.com[blackberry.com])

From: Wittman, Nancy (CAB) <Nancy.Wittman2@ontario.ca>
Date: Tuesday, Jun 20, 2017, 9:07 PM
To: McLean, David (MOF) <David.McLean@ontario.ca>, Tekle, Jonathan (MOF) <Jonathan.Tekle@ontario.ca>
Subject: Fw: Fair Hydro Regs/Bundle

Hi.

Want to make sure you are aware that ECO has bundled MOF and Energy's Fair Hydro items - now tracking DTC although originally schedule for the June 27 LRC.

I'm told that the energy regs won't be ready until Monday, unfortunately. Could you confirm the

status of the MOF fair hydro item (apologies that I have not been tracking it very closely since Gen has been our point person on that item).

Thx. Nancy

From: Scott-Vickers, James (CAB) [James.Scott-Vickers@ontario.ca]
To: David Brezer (MCS) [David.Brezer@ontario.ca]; Moore, Karen (CAB) [Karen.Moore4@ontario.ca]; Tamara Gilbert (MOHLTC) [Tamara.Gilbert@ontario.ca]; Francis, Robert (CAB) [Robert.Francis2@ontario.ca]; Jason Azzopardi (CAB) [Jason.Azzopardi@ontario.ca]; Lucia Frndova (EDU) [Lucia.Frndova@ontario.ca]
CC: Robert Foster (MOF) [Robert.Foster@ontario.ca]; Martha Greenberg (MOHLTC) [Martha.Greenberg@ontario.ca]; Shamira Madhany (CAB) [Shamira.Madhany3@ontario.ca]; Niyaz, Fatima (CAB) [Fatima.Niyaz@ontario.ca]; Johnston, John (CAB) [John.Johnston3@ontario.ca]; Dianne Hall (CAB) [Dianne.Hall@ontario.ca]; Hindmarch-Watson, Tim (CAB) [Tim.Hindmarch-Watson2@ontario.ca]; Downarowicz, Ewa (CAB) [Ewa.Downarowicz2@ontario.ca]; Franks, Sebastian (CAB) [Sebastian.Franks2@ontario.ca]; Michelle Astill (CAB) [Michelle.Astill@ontario.ca]; Rankin, Christine (CAB) [Christine.Rankin2@ontario.ca]
Subject: RE: June 27 Cabinet Binders
Date: Tuesday, June 20, 2017 16:21:37

A reminder that Cabinet binders will go out Thursday afternoon.

This means our target is for all ministry mtrls to be here in ECO by end of day Wednesday.

Then CBNs can wait until after the SoC briefing; if lucky then no changes after SoC and you can print (or for those with confidence, print in ahead in expectation your note will sail), or lightning changes after SoC in time to get CBNs to us by 130 Thursday.

AND, a reminder that we now send most POCO binders digitally, so every entry in mosaic needs to have the right ministry deck uploaded by the ministry, and the right CBN in the system. If for osme reason you haven't got your mosaic entry sorted out correctly, you need to email Jason and my folks the digital copies of your documents. But rerally, they have to be in mosaic in the long run anyway, so why not put them there now?

And as usual, if there are items still under consideration, we need to review what we send the POCO folks in draft form (but ministers get nothing until final).

James Scott-Vickers

Manager, Cabinet Operations

Deputy Clerk of the Executive Council of Ontario

416-325-6883

From: Scott-Vickers, James (CAB)
Sent: Friday, June 16, 2017 3:15 PM
To: Foster, Robert (CAB)
Cc: Greenberg, Martha (CAB); Madhany, Shamira (CAB); Brezer, David (CAB); Moore, Karen (CAB); Gilbert, Tamara (CAB); Francis, Robert (CAB); Azzopardi, Jason (CAB); Frndova, Lucia (CAB)
Subject: June 27 Cabinet Binders

Rob,

Since the next Cabinet is on a Tuesday, I hope to move up binder distribution to Thursday afternoon.

That would allow the SoC briefing to occur, and then immediately afterwards binders could be put together and distributed.

This moves the deadline for materials to be end of day Wednesday/first thing Thursday, with the CBNs immediately after SoC.

Of course if an item or items need more time given the SoC briefing, we could hold them for a follow up mailing.

James Scott-Vickers

Manager, Cabinet Operations

Deputy Clerk of the Executive Council of Ontario

416-325-6883

Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister — 2017/06/16 — Date

Minister — 2017/06/20 — Date

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the authority of the Minister of Finance to lend to the OFA which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017* as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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, therefore, 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 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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.

- 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.

- 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*.

- It is proposed that the OIC authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 billion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.

- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Senior Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	Nancy Wittman Senior Policy Advisor Cabinet Office	416-325-9140

Appendices

Appendix A: The Proposed OIC

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an "Advance") made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on

Authority Verified/Compétence vérifiée: Patrick Rdms

Please print name/Nom en lettres moulées s.v.p.: PATRICK RUNDAWS

Telephone/Téléphone: (416) 212-4538

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the "Reset Date") to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a "Third Party Loan"), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales

créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

Lieutenant Governor
La lieutenante-gouverneure

From: Gavin He
To: John Kim; Bruno Amara
Cc: Ronald Kwan
Subject: FW: Fair Hydro Regs/Bundle
Date: Wednesday, June 21, 2017 9:06:51 AM
Attachments: RE June 27 Cabinet Binders.msg
FHP - IESO Borrowing Requirements - June 27 LRC - DM and Minister signed (June 20 2017).pdf

---

Hi John/Bruno,

The OIC for IESO has been approved by the Minister.

Please note that Energy is still working on the regulations and probably won't be ready until Monday, so it will be tracking directly to Cabinet (DTC) and not through LRC.

DMO will share a copy of Energy Regs with us once available.

Regards,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Wednesday, June 21, 2017 8:57 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Fair Hydro Regs/Bundle

Hi Ron,

Hope all is well!

ECO has bundled the MOF and Energy's Fair Hydro items - now tracking DTC although originally scheduled for the June 27 LRC.

Energy Regs won't be ready until Monday. Our item was approved yesterday late afternoon. Attached for your records.

Let me know if you have any questions.

Cheers,
Jonathan

From: McLean, David (MOF)
Sent: June 20, 2017 9:29 PM
To: Young, Gwendolynne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: FW: Fair Hydro Regs/Bundle

Gwen - see below. Can you please flag for the fine people in GBESI?

Jonathan - please let Ron Kwan and Gavin know.

Sent with BlackBerry Work
(www.blackberry.com)

From: Wittman, Nancy (CAB) <Nancy.Wittman2@ontario.ca>
Date: Tuesday, Jun 20, 2017, 9:07 PM
To: McLean, David (MOF) <David.McLean@ontario.ca>, Tekle, Jonathan (MOF) <Jonathan.Tekle@ontario.ca>
Subject: Fw: Fair Hydro Regs/Bundle

Hi.

Want to make sure you are aware that ECO has bundled MOF and Energy's Fair Hydro items - now tracking DTC although originally schedule for the June 27 LRC.

I'm told that the energy regs won't be ready until Monday, unfortunately. Could you confirm the status of the MOF fair hydro item (apologies that I have not been tracking it very closely since Gen has been our point person on that item).

Thx. Nancy

From: James Scott-Vickers (CAB) []
To: David Brezer (MCS) [David.Brezer@ontario.ca]; Moore, Karen (CAB) [Karen.Moore4@ontario.ca]; Tamara Gilbert (MOHLTC) [Tamara.Gilbert@ontario.ca]; Francis, Robert (CAB) [Robert.Francis2@ontario.ca]; Jason Azzopardi (CAB) [Jason.Azzopardi@ontario.ca]; Lucia Frndova (EDU) [Lucia.Frndova@ontario.ca]
CC: Robert Foster (MOF) [Robert.Foster@ontario.ca]; Martha Greenberg (MOHLTC) [Martha.Greenberg@ontario.ca]; Shamira Madhany (CAB) [Shamira.Madhany3@ontario.ca]; Niyaz, Fatima (CAB) [Fatima.Niyaz@ontario.ca]; Johnston, John (CAB) [John.Johnston3@ontario.ca]; Dianne Hall (CAB) [Dianne.Hall@ontario.ca]; Hindmarch-Watson, Tim (CAB) [Tim.Hindmarch-Watson2@ontario.ca]; Downarowicz, Ewa (CAB) [Ewa.Downarowicz2@ontario.ca]; Franks, Sebastian (CAB) [Sebastian.Franks2@ontario.ca]; Michelle Astill (CAB) [Michelle.Astill@ontario.ca]; Rankin, Christine (CAB) [Christine.Rankin2@ontario.ca]
Subject: RE: June 27 Cabinet Binders
Date: Tuesday, June 20, 2017 16:21:37

A reminder that Cabinet binders will go out Thursday afternoon.

This means our target is for all ministry mtrls to be here in ECO by end of day Wednesday.

Then CBNs can wait until after the SoC briefing; if lucky then no changes after SoC and you can print (or for those with confidence, print in ahead in expectation your note will sail), or lightning changes after SoC in time to get CBNs to us by 130 Thursday.

AND, a reminder that we now send most POCO binders digitally, so every entry in mosaic needs to have the right ministry deck uploaded by the ministry, and the right CBN in the system. If for osme reason you haven't got your mosaic entry sorted out correctly, you need to email Jason and my folks the digital copies of your documents. But rerally, they have to be in mosaic in the long run anyway, so why not put them there now?

And as usual, if there are items still under consideration, we need to review what we send the POCO folks in draft form (but ministers get nothing until final).

James Scott-Vickers

Manager, Cabinet Operations

Deputy Clerk of the Executive Council of Ontario

416-325-6883

From: Scott-Vickers, James (CAB)
Sent: Friday, June 16, 2017 3:15 PM
To: Foster, Robert (CAB)
Cc: Greenberg, Martha (CAB); Madhany, Shamira (CAB); Brezer, David (CAB); Moore, Karen (CAB); Gilbert, Tamara (CAB); Francis, Robert (CAB); Azzopardi, Jason (CAB); Frndova, Lucia (CAB)
Subject: June 27 Cabinet Binders

Rob,

Since the next Cabinet is on a Tuesday, I hope to move up binder distribution to Thursday afternoon.

That would allow the SoC briefing to occur, and then immediately afterwards binders could be put together and distributed.

This moves the deadline for materials to be end of day Wednesday/first thing Thursday, with the CBNs immediately after SoC.

Of course if an item or items need more time given the SoC briefing, we could hold them for a follow up mailing.

James Scott-Vickers

Manager, Cabinet Operations

Deputy Clerk of the Executive Council of Ontario

416-325-6883

Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister — 2017/06/16 — Date

Minister — 2017/06/20 — Date

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the authority of the Minister of Finance to lend to the OFA which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017* as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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, therefore, 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 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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.

- 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.

- 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*.

- It is proposed that the OIC authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 billion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.

- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Senior Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	Nancy Wittman Senior Policy Advisor Cabinet Office	416-325-9140

Appendices

Appendix A: The Proposed OIC

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an "Advance") made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on

Authority Verified/Compétence vérifiée: Patrick Rdms

Please print name/Nom en lettres moulées s.v.p.: PATRICK RUNDAWS

Telephone/Téléphone: (416) 212-4538

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the "Reset Date") to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a "Third Party Loan"), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales

créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

Lieutenant Governor
La lieutenante-gouverneure

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: Finalization of OFA-IESO Credit Agreements
Date:	Tuesday, October 24, 2017 4:28:55 PM

Fyi, and pls. let me know if you have any concerns / comments.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: Finalization of OFA-IESO Credit Agreements
Date:	Tuesday, October 24, 2017 5:08:10 PM

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Tekle, Jonathan (MOF)
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: Finalized Package - OPG/IESO Indemnities
Date:	Tuesday, June 27, 2017 11:34:40 AM
Attachments:	Signed Memo.pdf 20170626--s.28 business case - IESO and OPG Indemnity OFHP -FINAL.DOCX 20170626-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx 20170626-IESO Indemnity Agreement - FINAL.DOCX 20170626-OPG Indemnity Agreement - FINAL.DOCX

Hi Ron,

I believe you were expecting these from Energy.

Cheers,
Jonathan

From: Schlaepfer, Martin (ENERGY)
Sent: June 27, 2017 11:24 AM
To: McLean, David (MOF)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: Finalized Package - OPG/IESO Indemnities

Hi David,

Attached is the finalized s. 28 package request for the OPG/IESO indemnities, with the transmittal memo signed by our Minister.

Please let us know when the Minister of Finance has approved the Section 28s.

Thanks,
Martin

Martin Schlaepfer
Director of Operations
Deputy Minister's Office
Ministry of Energy
T: 416-326-7688
E: martin.schlaepfer@ontario.ca

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

June 27, 2017

MEMORANDUM TO: Charles Sousa
Minister of Finance

FROM: Glenn Thibeault
Minister of Energy

RE: Request for section 28 approval of indemnities to the IESO, OPG, OPG's subsidiaries, and respective directors, officers, and employees in relation to the Ontario Fair Hydro Plan

---

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") the forms of indemnity for the IESO, its directors, officers, and employees; and OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*")) and their respective directors, officers, and employees (collectively the "Protected Persons"). Ministry of Finance and Ministry of Energy staff have worked together to review OPG's and IESO's indemnity requests and finalize materials.

OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their activities in carrying out the implementation of the Plan. OPG has also requested this form of indemnity for its subsidiaries (other than any financing entities as defined under the Act) ("Subsidiaries") and respective directors, officers and employees. The Ministry of Energy has committed to providing these indemnities. The Minister of Energy ("Minister") has been briefed and supports this request for approval.

The *Act* enables the implementation of the Ontario Fair Hydro Plan (the "Plan"). Under the Plan, the government has proposed to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the Plan. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the Plan.

The Plan is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG, OPG's Subsidiaries, and IESO in carrying out their roles in implementing the Plan will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations and their directors, officers, and employees may be subject to increased liability specifically due to their roles with the Plan. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The indemnities will provide OPG, OPG's Subsidiaries, the IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the Plan.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified. Should the payment be required, the Ministry will return to TB/MBC for an increase in its allocation.

Approval of these indemnities is requested by June 30, 2017. Failure to obtain approval could jeopardize the implementation of the Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

Sincerely,

Glenn Thibeault
Minister

Enclosures

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective activities in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (not including any financing entities as defined in the *Act*) ("Subsidiaries") and their respective directors, officers and employees.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to OPG and the IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed (June 1, 2017).

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to

investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO,

its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith".

Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under

the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

(b) Description of Risk and any Risk Mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund;

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities;

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in

which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variances in the Indemnities includes a waiver provision whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the Protected Persons' activities in the implementation, or otherwise relating to the ONFHP (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity as OPG's directors/officers/employees, as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity).

However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c) in the IESO Indemnity and section 3(c) in the OPG Indemnity) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 8 in the IESO Indemnity and section 9 in the OPG Indemnity), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG, OPG's Subsidiaries and IESO's (including their respective directors, officers and employees') willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's Subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation (“OPG”). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries (not including any financing entities as defined under the Act) and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by OPG or its subsidiaries (not include the financing entities as defned under the Act), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity’s debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers, members of a committee or panel established by the directors, and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the Ontario Fair Hydro Plan such as the creation of a regulatory asset in relation to the GA financing component of the Ontario Fair Hydro Plan, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers	Providing this indemnity will facilitate IESO in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by the IESO, its directors (including a member of a committee or panel established by the directors), officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors (inlucidng a member of a committee or panel established by the directors), officers and employees; and medium with respect to the corporation itself.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the Act, its respective regulation, and/or any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act). The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

EXECUTION VERSION

INDEMNITY

THIS INDEMNITY effective as of this 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan");

AND WHEREAS the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

    (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

Administration Act (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

EXECUTION VERSION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first written above.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

From: Gavin He
To: Ronald Kwan
Cc: Usman Zahid; John Kim
Subject: FW: IESO - OEFC Drafts - IESO Comments Nov 29
Date: Thursday, November 30, 2017 5:10:39 PM
Attachments: $160M revolving credit - amending agreement no.7 Nov29 IESO Legal Comments.docx
$120M Note - amending agreement no.7 Nov29 IESO incl Legal Comments.docx

---

Hi Ron,

FYI – CMD has approved the attached version (with markup) revised by the IESO and is planning to move forward with the execution if IESO has no further edits.

Please note that the IESO requested a couple more edits to both agreements, in addition to amending the definition of "permitted lien", and CMD are good with those requested changes.

Regards,
Gavin He

From: Ryan Blackbyrne
Sent: Thursday, November 30, 2017 4:37 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO - OEFC Drafts - IESO Comments Nov 29

Hi Victor,

We have reviewed and approved the changes you made to the drafts. We having nothing further to add. Are there any other revisions you wish to make before preparing execution copies?

Thank You,
Ryan

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Wednesday, November 29, 2017 6:50 PM
To: Ryan Blackbyrne <Ryan.Blackbyrne@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO - OEFC Drafts - IESO Comments Nov 29

Hi Ryan – thanks for the drafts. Please see attached markups that include our comments – I haven't had an opportunity to discuss these changes/comments internally but thought I should forward these asap given the time pressure.

The main adders that I have included track the language in the recently executed FHP Credit Facility.

Regarding the deletion of s.3.7 in the Note Agreement ("Other Indebtedness"), this is duplicative of s.3.8 ("Negative Pledge") but also conflicts with it in certain respects so may cause confusion and I believe the easiest way to deal with it is to delete it since I don't think it adds anything. (You will note that a similar clause is not included in the Revolving Credit Agreement.)

We may have more comments after we have a chance to discuss your draft and my comments internally tomorrow.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: Ryan Blackbyrne [mailto:Ryan.Blackbyrne@ofina.on.ca]
Sent: November 29, 2017 4:50 PM
To: Anthony Martinello
Cc: Jean-Francois Beaupre; John Kim; Victor Buza; Gavin He; Opal Kandelas; Sarah Harris; Lisa Stein
Subject: RE: IESO - OEFC Nov 27

Hi Anthony,

Please find initial draft documents for your review. Please note terms of these documents are still subject to internal approval at the OFA. Please let us know your comments.

Regards,

Ryan Blackbyrne
Documentation & Analysis Specialist
Capital Markets Division
Ontario Financing Authority
1 Dundas Street West, Suite 1400

Toronto, ON M7A 1Y7
416-325-8143
ryan.blackbyrne@ofina.on.ca

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, November 27, 2017 2:50 PM
To: Ryan Blackbyrne <Ryan.Blackbyrne@ofina.on.ca>
Cc: Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO - OEFC Nov 27

Ryan – are you able to send over draft documents for our review? I understand that we may start to work on them now.

Regards.

From: Anthony Martinello
Sent: November 07, 2017 4:07 PM
To: 'Ryan.Blackbyrne@ofina.on.ca'
Cc: 'Jean-Francois.Beaupre@ofina.on.ca'; William Tan; John Kim; Victor Buza
Subject: IESO - OEFC Nov 7

Ryan,

As discussed with Will today, I understand you will be co-ordinating the proposed 2 amendments to the existing IESO-OEFC credit facilities.

For starters, 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."

2.DRAFT
The OFA agreements had required an intercept provision, …..not sure if the same applies to OEFC if

yes:

“Section 5.7 Intercept
(a) The IESO hereby acknowledges that, in accordance with the terms of the letter agreement of November 6th , 2017 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.
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.”

3.
If any… other relevant updates that make sense to do now……I do not anticipate any material ones.

We need your support to expedite the above in order to avoid delays in the Fair Hydro implementation.
Regards.

This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

AMENDING AGREEMENT NO. 7

This Amending Agreement is effective as of the • day of •, 2017.

BETWEEN: **INDEPENDENT ELECTRICITY SYSTEM OPERATOR ("IESO")**

as Borrower

AND: **ONTARIO ELECTRICITY FINANCIAL CORPORATION ("OEFC")**

as Lender

WHEREAS IESO and OEFC entered into a Revolving Credit Facility Agreement dated April 23, 2010, as amended by Amending Agreement No.1 dated July 21, 2010, Amending Agreement No. 2 dated October 14, 2011, Amending Agreement No. 3 dated April 30, 2013, Amending Agreement No. 4 dated April 30, 2014, Amending Agreement No. 5 dated December 19, 2014 and Amending Agreement No. 6 dated April 30, 2017 (collectively the "Agreement") pursuant to which OEFC agreed to provide a revolving credit facility to IESO in the principal amount of up to CDN $160 million;

AND WHEREAS the *Ontario Fair Hydro Plan Act, 2017* came into force on June 1, 2017;

AND WHEREAS at the request of the IESO the parties now wish to ~~now~~ amend the Agreement to accommodate IESO's role and obligations under the *Ontario Fair Hydro Plan Act, 2017*;

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

1. The following definitions are added to Section 1.1 (Definitions) of the Agreement:

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

   "**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.

2. The definition of "Ontario's Fair Hydro Plan" is deleted in its entirety.

3. The definition of the term "Permitted Liens" in Section 1.1 (Definitions) of the Agreement is amended by deleting the word "and" at the end of paragraph ~~subsection~~

Formatted: Indent: Left: 0.75"

Formatted: Font: Bold

Formatted: Font: Bold

~~1.1~~(j); deleting~~replacing~~ the "." at the end of paragraph~~subsection (1.1~~ (k) and replacing it with "; and"; and adding the following new paragraph ~~subsection 1.1~~(l):

(l) any~~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.

4. Subsection 3.2(4) of the Agreement is deleted and replaced by the following:

(4) 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 4.7(a) through (e) hereof.

~~4.~~5. Paragraph 3.6(c) of the Agreement is deleted and replaced by the following:

(c) that there shall, in the reasonable opinion of OEFC, have been no material adverse change in the financial condition of IESO, provided however that any adverse change in IESO's financial condition related to or resulting from the discharge by IESO of its responsibilities under OFHP shall be deemed not to be a material adverse change for the purposes of this section; and

IN ALL OTHER RESPECTS, the Agreement is confirmed by IESO and OEFC.

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By:_____
Name: Kimberly Marshall
Title: Vice President, Corporate Services; Chief Financial Officer; and Treasurer

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By:_____
Name: Michael D. Manning
Title: Executive Director and Chief Investment Officer

Formatted: Indent: Left: 0.75"

Formatted: Normal, Indent: Left: 0.5", Hanging: 0.25", No bullets or numbering

Formatted: Font: Times New Roman, 12 pt

Formatted: Indent: Left: 0.5", No bullets or numbering

Commented [RB1]: See Amending Agreement No.6 dated April 1, 2017. The amendment to paragraph 3.6(c) at that time referenced "Ontario's Fair Hydro Plan". Since the Ontario Fair Hydro Plan Act, 2017 has since come into force on June 1, 2017 it is appropriate to update this paragraph with reference to the Act.

Formatted: Indent: Left: 0.75"

Formatted: Indent: Left: 3"

Formatted: Indent: First line: 0"

Formatted: Indent: Left: 3"

Formatted: Indent: Left: 3"

Formatted: Indent: First line: 0"

Formatted: Indent: Left: 3"

AMENDING AGREEMENT NO. 7

This Amending Agreement is made as of the [DATE], 2017 between:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR ("IESO")

and

ONTARIO ELECTRICITY FINANCIAL CORPORATION ("OEFC")

WHEREAS IESO and OEFC have entered into an agreement providing for the Issuance of a Note dated April 1, 1999 (the "Original Agreement");

AND WHEREAS pursuant to amending agreements dated March 23, 2000, April 23, 2009, May 1, 2011, May 1, 2013, April 30, 2014 and April 30, 2017 the parties amended the Original Agreement (as so amended, the "Agreement");

AND WHEREAS the *Ontario Fair Hydro Plan Act, 2017* came into force on June 1, 2017;

AND WHEREAS at the request of the IESO the parties now wish to ~~now~~ amend the Agreement to accommodate IESO's role and obligations under the *Ontario Fair Hydro Plan Act*, 2017;

NOW THEREFORE in consideration of the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged by each party), the parties agree as follows:

1. The following definitions are added to Section 1.1 (Definitions) of the Agreement:

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

   "**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.

2. The definition of "Permitted Liens" in Section 1.1 (Definitions) of the Agreement is amended by deleting the word "and" at the end of paragraph~~subsection 1.1~~ (j); deleting~~replacing~~ the "." at the end of paragraph ~~subsection (1.1~~ (k) and replacing it with "; and"; and adding the following new paragraph ~~subsection 1.1~~(l):

   (l) any~~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

Formatted: Font: Bold

Formatted: Font: Bold

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.

3. Subsection 2.2(2) of the Agreement is deleted and replaced by the following:

(2) The Note shall at all times rank *pari passu* with all other unsecured Senior Debt of the IESO, subject to the existence of any Liens that secure Indebtedness as permitted by subsections 3.8 (a) through (f) hereof.

4. Delete the paragraph following the heading "Section 3.7 Other Indebtedness" and replace with the words "Intentionally Left Blank".

IN ALL OTHER RESPECTS, the Agreement is confirmed by the parties.

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By:_____
Name: Kimberly Marshall
Title: Vice President, Corporate Services; Chief Financial Officer; and Treasurer

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By:_____
Name: Michael D. Manning
Title: Executive Director and Chief Investment Officer

Formatted: Indent: Left: 0", Hanging: 0.5"
Formatted: Font: Italic
Formatted: Indent: Left: 0", Hanging: 0.25"
Formatted: Indent: Left: 3"
Formatted: Indent: First line: 0"
Formatted: Indent: Left: 3"
Formatted: Indent: Left: 3"
Formatted: Indent: First line: 0"
Formatted: Indent: Left: 3"

From: John Kim
To: Ronald Kwan
Subject: FW: IESO - OEFC credit facilities : permitted liens
Date: Wednesday, November 22, 2017 11:47:18 AM

Fyi.

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 22, 2017 11:13 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thx. I will need a hard stop (final) on these OEFC docs no later than Nov 30 – the IESO intends to sign all agreements for the FH program including the security agreement by this date (at least this is what I know today).
If you cannot meet Nov 30, can we talk about some sort of OEFC to issue a waiver letter to not put the IESO offside on the existing OEFC credit facilities otherwise I may have a cross-default issue with TD bank.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 22, 2017 11:09 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

Just to update you. I'm still working through this discussion here at the OFA.

Will keep you posted.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, November 20, 2017 10:22 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – the TD credit facility has "permitted lien" clause language similar to the OFA facilities' clauses specific for the fair hydro program.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 20, 2017 10:19 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

I found someone at Energy who is in the loop. Also, I know we talked on the phone last week but could you confirm that the same changes have been made with TD?

Thanks,

John

From: John Kim
Sent: Monday, November 20, 2017 8:56 AM
To: 'Anthony Martinello' <Anthony.Martinello@ieso.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

Would you have a sense of who at Energy is looped in on this agreement?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Friday, November 17, 2017 5:09 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – as discussed see attached most recent (likely final) security agreement (Nov 7th).

Let me know if you wish to discuss – this draft makes references to end date of June 2021 and the statute. Regards

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 15, 2017 7:26 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thanks Anthony. If we have follow up, we will reach out to you.

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 15, 2017 6:49 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OEFC credit facilities : permitted liens

John,

As discussed yesterday, 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.

Happy to discuss further. I am out of the office most of this week on IESO business matters but available by cell 289-795-9426, or if necessary you may connect with Victor.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: IESO - OEFC credit facilities : permitted liens
Date:	Tuesday, November 21, 2017 5:31:53 PM
Attachments:	reg 207-17 seal.pdf

Fyi

From: Lightbody, Ava (ENERGY) [mailto:Ava.Lightbody@ontario.ca]
Sent: Tuesday, November 21, 2017 10:24 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Good morning John,

I understand you are looking to review a copy of the amendments to 206/17. Attached is the sealed regulation that went to LRC yesterday. Please let me know if you have any questions or concerns.

Thanks,

Ava

---------- Forwarded message ----------
From: "**John Kim**" <John.Kim@ofina.on.ca>
Date: Tue, Nov 21, 2017 at 10:08 AM -0500
Subject: RE: IESO - OEFC credit facilities : permitted liens
To: "Christie, Tim (ENERGY)" <Tim.Christie@ontario.ca>

Could you share the amendments?

-----Original Message-----
From: Christie, Tim (ENERGY) [mailto:Tim.Christie@ontario.ca]
Sent: Tuesday, November 21, 2017 10:06 AM
To: John Kim
Subject: Re: IESO - OEFC credit facilities : permitted liens

Amendments to 206/17 went to LRC yesterday, but they don't speak to amounts payable.

On Tue, Nov 21, 2017 at 10:04 AM -0500, "John Kim" <john.kim@ofina.on.ca> wrote:

Hi Tim,

Do you have the draft regulation as related to the CEA and how much is to be payable in each period, etc? Essentially, any draft regulation or changes to the O.Reg 206/17?

John

From: Christie, Tim (ENERGY) [mailto:Tim.Christie@ontario.ca]
Sent: Monday, November 20, 2017 10:46 AM
To: John Kim
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi John, yes the security issue came up in the Thursday morning meetings and we understand that the proposed solution is necessary to meeting financing requirements.

Tim

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November-20-17 10:18 AM
To: Christie, Tim (ENERGY)
Subject: FW: IESO - OEFC credit facilities : permitted liens

Hi Tim,

This was the item....I wanted to run it by you that Energy had looked at the item and that it was aware of the discussion between the organizations.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Friday, November 17, 2017 5:09 PM
To: John Kim <john.kim@ofina.on.ca>
Cc: Victor Buza <victor.buza@ieso.ca>; Gavin He <gavin.he@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John - as discussed see attached most recent (likely final) security agreement (Nov 7th).

Let me know if you wish to discuss - this draft makes references to end date of June 2021 and the statute. Regards

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 15, 2017 7:26 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thanks Anthony. If we have follow up, we will reach out to you.

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 15, 2017 6:49 AM
To: John Kim <john.kim@ofina.on.ca>
Cc: Victor Buza <victor.buza@ieso.ca>
Subject: IESO - OEFC credit facilities : permitted liens

John,

As discussed yesterday, 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.

Happy to discuss further. I am out of the office most of this week on IESO business matters but available by cell 289-795-9426, or if necessary you may connect with Victor.

Regards.
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.
</victor.buza@ieso.ca</john.kim@ofina.on.ca</gavin.he@ofina.on.ca</victor.buza@ieso.ca</john.kim@ofina.on.ca</john.kim@ofina.on.ca

Office of
Legislative Counsel

Suite 3600, Whitney Block
99 Wellesley Street West
Queen's Park
Toronto Ontario M7A 1A2

Tel (416) 326-2841
Fax (416) 326-2806

Bureau des
conseillers législatifs

Bureau 3600, Édifice Whitney
99, rue Wellesley ouest
Queen's Park
Toronto (Ontario) M7A 1A2

Tél. (416) 326-2841
Télécopieur (416) 326-2806

Ontario

Date : November 9, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017
Amending - O. Reg. 206/17
GENERAL
reg2017.0628.e05

This proposed regulation has been sealed under the authority of the Registrar of Regulations.

REGISTRAR OF REGULATIONS

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Ontario Fair Hydro Plan Act, 2017.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : November 9, 2017

Re : ENE
Proposed regulation under the Ontario Fair Hydro Plan Act, 2017
Amending - O. Reg. 206/17
GENERAL
Reg2017.0628.e05

This appended regulation has been sealed under the authority of the Registrar of Regulations.

Authority Verified
Compétence vérifiée _____

Recommended by the Management Board of Cabinet on
Recommandé par le Conseil de gestion du gouvernement le _____

Please print name
Nom en lettres moulées s.v.p. _____

Secretary
Secrétaire _____

Telephone
Téléphone _____

CONFIDENTIAL **REG2017.0628.e**
Until filed with the **5-TP**
Registrar of Regulations

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

Amending O. Reg. 206/17

(GENERAL)

1. (1) Subsection 1 (1) of Ontario Regulation 206/17 is amended by adding the following definition:

"acceleration of a funding obligation" means,

(a) a portion of the principal amount owing in respect of the funding obligation has become due and payable by a financing entity before the scheduled payment date, maturity date or redemption date, or

(b) a party to a derivative agreement in respect of the funding obligation has elected to close-out or terminate the agreement, resulting in an obligation on a financing entity to pay a termination amount, close-out amount or similar amount;

(2) Paragraph 2 of the definition of "readjustment amount" in subsection 1 (2) of the Regulation is amended by striking out "exceeds the fair allocation amount" and substituting "exceeds the absolute value of the fair allocation amount".

2. (1) Subsection 5 (1) of the Regulation is amended by adding "and section 6.1" after "subsection (2)" in the portion before paragraph 1.

(2) Subparagraph 2 ii of subsection 5 (1) of the Regulation is revoked and the following substituted:

ii. For any period before May 1, 2021, amounts received during the period in respect of funding rebates and carrying costs.

ii.1 For any period on and after May 1, 2021, amounts received during the period in respect of funding rebates.

3. Subsection 6 (3) of the Regulation is amended by adding "Subject to section 6.1" at the beginning.

4. The Regulation is amended by adding the following section:

Acceleration

6.1 (1) Despite the acceleration of a funding obligation at any time, the Financial Services Manager shall, for the purposes of determining the clean energy adjustment and the true up amount under section 15 of the Act, determine the estimated finance amount and the true up amount as if no acceleration had occurred.

(2) If the application of subsection (1) results in the estimated finance amount being less than what it would have otherwise been, the Financial Services Manager shall add an additional amount to the estimated finance amount determined under subsection (1), which additional amount shall be calculated as follows:

1. Estimate the sum of amounts that constitute the clean energy adjustment for each month during the reference period, determined in accordance with subsection (1).

2. Estimate the sum of amounts that would have, in the absence of subsection (1), constituted the clean energy adjustment for each month during the reference period.

3. Determine the lesser amount of the following:

    i. The sum estimated under paragraph 2.

    ii. The fair allocation amount for the reference period.

4. Determine the amount, if any, by which the amount determined under paragraph 3 exceeds the sum estimated under paragraph 1.

5. (1) Subsection 14 (2) of the Regulation is amended by adding the following paragraph:

3. Subject to subsection (2.1), if the fair allocation amount in respect of the reference period is either a negative amount or an amount that is less than the carrying costs of financing entities during the reference period, the Financial Services Manager may include all or a portion of the carrying costs in clean energy adjustments to be collected from specified consumers for the reference period.

(2) Section 14 of the Regulation is amended by adding the following subsection:

(2.1) Paragraph 3 of subsection (2) does not apply in respect of the carrying costs of financing entities that are paid by the IESO under section 9.1.

Commencement

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

From: John Kim
To: Ronald Kwan
Subject: FW: IESO - OEFC credit facilities : permitted liens
Date: Monday, November 20, 2017 10:51:23 AM

Hi Ron,

This is a response from Tim Christie. This should be sufficient, I believe?

Thanks,

John

From: Christie, Tim (ENERGY) [mailto:Tim.Christie@ontario.ca]
Sent: Monday, November 20, 2017 10:46 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi John, yes the security issue came up in the Thursday morning meetings and we understand that the proposed solution is necessary to meeting financing requirements.

Tim

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November-20-17 10:18 AM
To: Christie, Tim (ENERGY)
Subject: FW: IESO - OEFC credit facilities : permitted liens

Hi Tim,

This was the item….I wanted to run it by you that Energy had looked at the item and that it was aware of the discussion between the organizations.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Friday, November 17, 2017 5:09 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – as discussed see attached most recent (likely final) security agreement (Nov 7th).

Let me know if you wish to discuss – this draft makes references to end date of June 2021 and the statute. Regards

---

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 15, 2017 7:26 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thanks Anthony. If we have follow up, we will reach out to you.

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 15, 2017 6:49 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OEFC credit facilities : permitted liens

John,

As discussed yesterday, 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.

Happy to discuss further. I am out of the office most of this week on IESO business matters but available by cell 289-795-9426, or if necessary you may connect with Victor.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: FW: IESO - OEFC credit facilities : permitted liens
Date: Monday, November 20, 2017 9:42:09 AM
Attachments: IESO Security Agreement (November 7th Rating Agency Draft).docx

---

Hi Ron,

FYI, and essentially, it would be ideal if we can confirm Energy's support for this. This would fall under the category of "Commercial Agreement (IESO/OPG)" during the implementation discussions.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Friday, November 17, 2017 5:09 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – as discussed see attached most recent (likely final) security agreement (Nov 7th).

Let me know if you wish to discuss – this draft makes references to end date of June 2021 and the statute. Regards

---

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 15, 2017 7:26 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thanks Anthony. If we have follow up, we will reach out to you.

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 15, 2017 6:49 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OEFC credit facilities : permitted liens

John,

As discussed yesterday, 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.

Happy to discuss further. I am out of the office most of this week on IESO business matters but available by cell 289-795-9426, or if necessary you may connect with Victor.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

Draft Date: November 7, 2017

SECURITY AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998,

(hereinafter referred to as the "**Grantor**"),

IN FAVOUR OF:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario,

(hereinafter referred to as the "**Secured Party**"),

WHEREAS under Regulation 206/17 made under the *Ontario Fair Hydro Plan Act, 2017* (the "**Regulation**"), the Grantor is required to pay to the Secured Party the Carrying Costs of the Secured Party during the period beginning on April 1, 2017 and ending on June 30, 2021 (the "**Statutory Obligation**");

AND WHEREAS the Grantor (together with the Secured Party, collectively referred to as the "**Parties**") has agreed to enter into a security agreement in favour of the Secured Party to secure payment of the Statutory Obligation;

NOW THEREFORE THIS AGREEMENT WITNESSES that, for and in consideration of the premises, mutual covenants and conditions herein contained and such other lawful and valuable consideration the receipt of sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless there is something in the context or subject matter inconsistent therewith,

(a) "**Account**" shall have the meaning attributed to such term in the PPSA;

(b) "**Business Day**" means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;

(c) "**Carrying Costs**" shall have the meaning attributed to the term "carrying costs" in the Regulation;

(d) "**Collateral**" shall have the meaning attributed to such term in Section 2.1;

(e) **"Electricity Vendor"** shall mean a licensed distributor and a licensed retailer, each as defined in the Ontario Fair Hydro Act.

(f) "**Money**" shall have the meaning attributed to such term in the PPSA;

(g) "**Permitted Liens**" means liens approved in writing by the Secured Party;

(h) "**PPSA**" means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;

(i) "**Proceeds**" means "proceeds", as defined in the PPSA, of the Collateral;

(j) **"Receiver"** shall have the meaning attributed to such term in Section 6.2 of this Agreement;

(k) "**Regulation**" shall have the meaning attributed to such term in the recitals hereto;

(l) "**Statutory Obligation**" shall have the meaning attributed to such term in the recitals hereto.

1.2 Other Usages

References to "this Agreement", "hereof", "herein", "hereto" and like references refer to this Security Agreement and not to any particular Article, Section or other subdivision of this Agreement.

1.3 Plural and Singular

Where the context so requires, the words importing the singular number shall include the plural and vice versa.

1.4 Headings

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

1.5 Applicable Law

This Agreement and all documents delivered pursuant hereto shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties do hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court,

this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

1.7 Time of the Essence

Time shall in all respects be of the essence of this Agreement.

1.8 Recitals and Schedules

Each and every one of the recitals and schedules which are referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

2. SECURITY INTEREST

2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party in the following (collectively, the "**Collateral**"):

(a) all Accounts, which are now due, owing or accruing or growing due to, or which may hereafter become due, owing or accruing or growing due, to the Grantor by an Electricity Vendor;

(b) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

Whenever used elsewhere in this Agreement, the expression "**security interest**" refers to the security interest created in this Section 2.1.

2.2 Attachment of Security Interest

The Grantor acknowledges and agrees that (i) value has been given, (ii) the Grantor has rights in such of the Collateral as constitutes present property of the Grantor, and (iii) the security interest shall attach to existing Collateral upon execution of this Agreement by the Grantor and to each item of after-acquired Collateral at the time that the Grantor acquires any rights therein.

3. COVENANTS OF THE GRANTOR

3.1 Covenants

The Grantor hereby covenants and agrees with the Secured Party as follows:

(a) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.

(b) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.

(c) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby.

3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

4. DEALING WITH COLLATERAL

4.1 Grantor's Rights

Until the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

4.2 General Restrictions

The Grantor shall not, without the prior written consent of the Secured Party:

(a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business; or

(b) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

4.3 Release by the Secured Party

The Secured Party may, at its discretion, at any time release from the security interest created by this Agreement any part or parts of the Collateral or any other security or any surety for the Statutory Obligation either with or without sufficient consideration therefor without thereby releasing any other part of the Collateral or any person from this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The Grantor hereby represents and warrants to the Secured Party, the matters set out below:

(a) **Incorporation and Qualifications** – The Grantor is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement.

(b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

(c) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.

(d) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the existing Collateral free and clear of any liens other than Permitted Liens.

(e) **Grantor Information** – Schedule A sets forth (a) the Grantor's jurisdiction of incorporation, (b) the location of the Grantor's registered office and business operations and records, and (c) the Grantor's exact legal name (in English and French).

(f) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and

warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

6. ENFORCEMENT

6.1 Enforceability of Security

The security hereby constituted shall become enforceable only upon the failure of the Grantor to pay the Statutory Obligations when due, and then only to the extent of the Statutory Obligations not then paid when due. The Grantor acknowledges that it has no right in any circumstance to accelerate payment of the Statutory Obligations, to apply proceeds of Collateral on account of Statutory Obligations not yet due, or to reserve or hold proceeds of Collateral on account of Statutory Obligations not yet due.

6.2 Remedies

At any time that the security hereby constituted shall have become enforceable, the Secured Party may give notice of its intention to its exercise rights and remedies hereunder. At any time ten Business Days following the giving of such notice, and unless the amounts due and owing on account of the carrying Costs at the time of the Notice have been paid, the Secured Party shall have the following rights, powers and remedies:

(a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;

(b) to make payments to parties having prior charges or encumbrances on the Collateral;

(c) to preserve, protect and maintain the Collateral;

(d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;

(e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;

(f) to enjoy and exercise in respect of the Collateral all of the rights and remedies of a secured party under the PPSA;

(g) to notify the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and,

upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and

(h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

6.3 Special Rules re Accounts

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2,

(a) all Money or other form of payment received by the Grantor in respect of the Collateral shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and

(b) the Grantor shall not adjust, settle or compromise the amount or payment of any Collateral.

6.4 Receiver as Agent

The Receiver shall be deemed to be the agent of the Grantor for the purpose of establishing liability for the acts or omissions of the Receiver and the Secured Party shall not be liable for such acts or omissions and, without restricting the generality of the foregoing, the Grantor hereby irrevocably authorizes the Secured Party to give instructions to the Receiver relating to the performance of its duties as set out herein.

6.5 Expenses of Enforcement

The Grantor shall pay to the Receiver the remuneration of the Receiver and all costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis) properly incurred by the Receiver pursuant to its appointment and the exercise of its powers hereunder, and shall pay to the Secured Party and the Receiver as required all amounts of Money (including interest thereon) borrowed or advanced by either of them pursuant to the powers set out herein, and the obligations of the Grantor to the Secured Party and the Receiver pursuant to this Section 6.5 shall be payable on demand.

6.6 Indulgences and Releases

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor,

sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

6.7 No Liability for Failure to Exercise Remedies

The Secured Party and the Receiver shall not be liable or accountable to the Grantor or to any other person for any failure to exercise any of the rights, powers and remedies set out in this Agreement, and shall not be bound to commence, continue or defend proceedings for the purpose of preserving or protecting any rights of the Secured Party, the Receiver, the Grantor or any other party in respect of the same.

6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be promptly applied as follows:

(a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;

(b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

(c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and

(d) fourth, in payment of any surplus in accordance with applicable law.

6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

6.10 Restriction on Grantor

Upon notification of the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party or the appointment of a Receiver in respect of the Collateral, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and

privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

7. GENERAL

7.1 Waiver

Any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

7.2 The Secured Party as Attorney

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
[Address]

Attention: ■
Email: ■
Facsimile: ■

In the case of the Secured Party:

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■
Facsimile: ■

7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor's rights, duties or obligations hereunder without the prior written consent of the Secured Party.

7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by the Parties.

7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

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

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC., as Secured Party

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Grantor

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

GRANTOR INFORMATION

1. **Grantor's exact legal name: Independent Electricity System Operator**

   ■ [French]

2. **Grantor's jurisdiction of incorporation: Ontario**

3. **Grantor's registered office address: ■**

4. **Location of Grantor's business operations and records: ■**

From: John Kim
To: Ronald Kwan
Subject: FW: IESO - OEFC credit facilities : permitted liens
Date: Tuesday, November 28, 2017 6:37:42 PM

Fyi

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: November-28-17 6:21 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Yes – it's approved.

The agreement is to be signed on Friday this week – as a few minor edits are still being finalized. The Board has delegated its authority ensuring it's signed on Friday.

Since we have not yet seen the OEFC docs, I may ask for an interim waiver by OEFC so no default occurs.

Regards

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 28, 2017 4:55 PM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

What was the outcome of the November 22nd Board meeting? Did your Board approve the security agreement?

John

From: John Kim
Sent: November-27-17 2:12 PM
To: 'Anthony Martinello' <Anthony.Martinello@ieso.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

We are almost there. Last little bit of decision is still pending but I believe our senior folks are

onside. So you should start working with our Documentation folks on the drafting.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 22, 2017 11:13 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thx. I will need a hard stop (final) on these OEFC docs no later than Nov 30 – the IESO intends to sign all agreements for the FH program including the security agreement by this date (at least this is what I know today).
If you cannot meet Nov 30, can we talk about some sort of OEFC to issue a waiver letter to not put the IESO offside on the existing OEFC credit facilities otherwise I may have a cross-default issue with TD bank.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 22, 2017 11:09 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

Just to update you. I'm still working through this discussion here at the OFA.

Will keep you posted.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, November 20, 2017 10:22 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – the TD credit facility has "permitted lien" clause language similar to the OFA facilities' clauses specific for the fair hydro program.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 20, 2017 10:19 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

I found someone at Energy who is in the loop. Also, I know we talked on the phone last week but could you confirm that the same changes have been made with TD?

Thanks,

John

From: John Kim
Sent: Monday, November 20, 2017 8:56 AM
To: 'Anthony Martinello' <Anthony.Martinello@ieso.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

Hi Anthony,

Would you have a sense of who at Energy is looped in on this agreement?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Friday, November 17, 2017 5:09 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO - OEFC credit facilities : permitted liens

John – as discussed see attached most recent (likely final) security agreement (Nov 7th).

Let me know if you wish to discuss – this draft makes references to end date of June 2021 and the statute. Regards

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 15, 2017 7:26 AM
To: Anthony Martinello
Cc: Victor Buza; Gavin He
Subject: RE: IESO - OEFC credit facilities : permitted liens

Thanks Anthony. If we have follow up, we will reach out to you.

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, November 15, 2017 6:49 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OEFC credit facilities : permitted liens

John,

As discussed yesterday, 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.

Happy to discuss further. I am out of the office most of this week on IESO business matters but available by cell 289-795-9426, or if necessary you may connect with Victor.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Subject:	FW: IESO - OFA
Date:	Thursday, October 19, 2017 4:13:52 PM

Fyi, IESO will move on signing the letter agreement. #2 below will likely to happen though they are resisting it so we need to account for that as a separate matter.

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Thursday, October 19, 2017 3:59 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO - OFA

Please call my cell 289-795-9426.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 18, 2017 1:53 PM
To: Anthony Martinello
Subject: RE: IESO - OFA

Hi Anthony,

Any update on OPG's position?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, October 17, 2017 11:06 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OFA

Ronald/John,

Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.

DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim
Subject:	FW: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 2:40:51 PM

Hi John,

Let's discuss.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister’s exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From:	Anna Strathy
To:	Ronald Kwan; Ken Kandeepan
Subject:	FW: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 10:40:26 AM

I just clarified with Gadi – he's hoping for a response to the question below before 1pm today when he'll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From:	Ronald Kwan
To:	John Kim
Subject:	FW: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 5:45:11 PM

From: Ronald Kwan
Sent: September-18-17 17:38
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month`s discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ronald Kwan
To: John Kim
Subject: FW: IESO Credit Facility
Date: Wednesday, August 16, 2017 5:04:51 PM

Hi John,

FYI.

Ron

-----Original Message-----
From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: August-16-17 16:58
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Gavin He
To: Ronald Kwan
Subject: FW: IESO Financing Request from OFA
Date: Tuesday, May 30, 2017 10:52:17 AM

Hi Ron,

According to Jonathan's email below, since MOF has a lot of items tracking to LRC next month, he was advised that they cannot guarantee that items will be proceeded if materials are not provided on time.

Regards,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Monday, May 29, 2017 5:51 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Financing Request from OFA

Hey Gavin,

MOF has over 10 items currently tracking to LRC, so CO needs ADM materials delivered tomorrow. They have advised that they cannot guarantee that items will proceed to the June 27 LRC if materials are not provided on time.

Please do what you can to ensure we meet their deadline.

Cheers,
Jonathan

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: May 29, 2017 5:16 PM
To: Tekle, Jonathan (MOF)
Subject: RE: IESO Financing Request from OFA

Hi Jonathan,

Just a quick question. I thought the timeline to provide the material to LRC is 3 weeks ahead, so is there a reason why the materials needs to be provided to DMO by EOD tomorrow?

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]

Sent: Monday, May 29, 2017 2:42 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Financing Request from OFA

Here are the tracking details:

SUB-NAOIC-2017-01004 Mosaic ID: OICNA-13188

From: Tekle, Jonathan (MOF)
Sent: May 23, 2017 5:28 PM
To: 'Gavin He'
Subject: RE: IESO Financing Request from OFA

It has been requested for scheduling through EVista, CO still needs to confirm the agenda for the 27th.

We would need to provide ADM approved materials by the 30th.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: May 23, 2017 5:24 PM
To: Tekle, Jonathan (MOF)
Subject: RE: IESO Financing Request from OFA

Hi Jonathan,

Thank you very much! And this confirms that the IESO credit facility item is on the agenda on June 27th right?

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Tuesday, May 23, 2017 5:23 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Financing Request from OFA

Hi Gavin,

Here is the tracking number - **OICNA-13188**

Please let me know if anything else is required.

Cheers,
Jonathan

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: May 23, 2017 5:10 PM
To: Tekle, Jonathan (MOF)
Subject: RE: IESO Financing Request from OFA

Hi Jonathan,

Staff just had further discussions with our Legal and legal advised us that we will have our own LRC package, going together with Energy's LRC package. So in that case, we will need our own e-Vista number. Would you be able to get us the number?

Currently, this item is tracking towards the June 27th LRC date.

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, May 18, 2017 7:30 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Financing Request from OFA

Thanks for the quick follow-up. Sounds good, let's connect tomorrow.

Have a good night!

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: May 18, 2017 7:29 PM
To: Tekle, Jonathan (MOF)
Subject: Re: IESO Financing Request from OFA

Hi Jonathan,

CEFD has been working with Energy on this. The idea is to do a joint LRC submission with Energy since this OIC is just a part of the submission Energy is doing. So in that case, I don't think we need to get a separate e-Vista number for that.

Sure, we can chat further on this tomorrow.

Regards,
Gavin He

On May 18, 2017, at 7:21 PM, Tekle, Jonathan (MOF) <Jonathan.Tekle@ontario.ca> wrote:

Hi Gavin,

Any idea if this was tracking previously or will it need a new submission through E-Vista?

Let's connect tomorrow on this.

Cheers,
Jonathan

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: May 18, 2017 2:29 PM
To: Tekle, Jonathan (MOF)
Subject: IESO Financing Request from OFA

Hi Jonathan,

Hope you are doing well!

I am not sure if you were made aware of IESO's borrowing requirement for the Fair Hydro Plan from OFA. IESO staff have noted that IESO may need to cover clean energy costs if for some reason the OPG Trust chooses not to purchase a portion of the deferred Global Adjustment amounts under the proposed Fair Hydro Act. The legislation does not compel the Trust to purchase 100% of the regulatory asset at any given time. As the OFA currently provides a $975 million credit facility to the IESO for other purposes, it is proposed that the OFA provide a new credit facility to the IESO to support the financing need under Fair Hydro Act.

In order for this to happen, an Order-in-Council (OIC) will be required to borrow money from the Province. CEFD staff is currently working on the OIC and it's tracking towards the June 27th LRC date, as part of Energy's LRC submission. We are still working with Energy on the timeline as the OIC might proceed with the FHP Leg and Regs.

I would like to give you a heads-up on this as it will require approval from the Deputy and our Minister's approval as well, in order to move the LRC submission forward. I will keep you posted on the development on this.

Please let me know if you have any questions.

Thanks,
Gavin He

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail

and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: FW: IESO OEFC credit facilities
Date: Monday, November 27, 2017 11:50:49 AM
Attachments: IESO Security Agreement (November 7th Rating Agency Draft).docx

---

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

Draft Date: November 7, 2017

SECURITY AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998,

(hereinafter referred to as the "**Grantor**"),

IN FAVOUR OF:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario,

(hereinafter referred to as the "**Secured Party**"),

WHEREAS under Regulation 206/17 made under the *Ontario Fair Hydro Plan Act, 2017* (the "**Regulation**"), the Grantor is required to pay to the Secured Party the Carrying Costs of the Secured Party during the period beginning on April 1, 2017 and ending on June 30, 2021 (the "**Statutory Obligation**");

AND WHEREAS the Grantor (together with the Secured Party, collectively referred to as the "**Parties**") has agreed to enter into a security agreement in favour of the Secured Party to secure payment of the Statutory Obligation;

NOW THEREFORE THIS AGREEMENT WITNESSES that, for and in consideration of the premises, mutual covenants and conditions herein contained and such other lawful and valuable consideration the receipt of sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless there is something in the context or subject matter inconsistent therewith,

(a) "**Account**" shall have the meaning attributed to such term in the PPSA;

(b) "**Business Day**" means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;

(c) "**Carrying Costs**" shall have the meaning attributed to the term "carrying costs" in the Regulation;

(d) "**Collateral**" shall have the meaning attributed to such term in Section 2.1;

(e) **"Electricity Vendor"** shall mean a licensed distributor and a licensed retailer, each as defined in the Ontario Fair Hydro Act.

(f) "**Money**" shall have the meaning attributed to such term in the PPSA;

(g) "**Permitted Liens**" means liens approved in writing by the Secured Party;

(h) "**PPSA**" means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;

(i) "**Proceeds**" means "proceeds", as defined in the PPSA, of the Collateral;

(j) **"Receiver"** shall have the meaning attributed to such term in Section 6.2 of this Agreement;

(k) "**Regulation**" shall have the meaning attributed to such term in the recitals hereto;

(l) "**Statutory Obligation**" shall have the meaning attributed to such term in the recitals hereto.

1.2 Other Usages

References to "this Agreement", "hereof", "herein", "hereto" and like references refer to this Security Agreement and not to any particular Article, Section or other subdivision of this Agreement.

1.3 Plural and Singular

Where the context so requires, the words importing the singular number shall include the plural and vice versa.

1.4 Headings

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

1.5 Applicable Law

This Agreement and all documents delivered pursuant hereto shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties do hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court,

this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

1.7 Time of the Essence

Time shall in all respects be of the essence of this Agreement.

1.8 Recitals and Schedules

Each and every one of the recitals and schedules which are referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

2. SECURITY INTEREST

2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party in the following (collectively, the "**Collateral**"):

(a) all Accounts, which are now due, owing or accruing or growing due to, or which may hereafter become due, owing or accruing or growing due, to the Grantor by an Electricity Vendor;

(b) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

Whenever used elsewhere in this Agreement, the expression "**security interest**" refers to the security interest created in this Section 2.1.

2.2 Attachment of Security Interest

The Grantor acknowledges and agrees that (i) value has been given, (ii) the Grantor has rights in such of the Collateral as constitutes present property of the Grantor, and (iii) the security interest shall attach to existing Collateral upon execution of this Agreement by the Grantor and to each item of after-acquired Collateral at the time that the Grantor acquires any rights therein.

3. COVENANTS OF THE GRANTOR

3.1 Covenants

The Grantor hereby covenants and agrees with the Secured Party as follows:

(a) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.

(b) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.

(c) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby.

3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

4. DEALING WITH COLLATERAL

4.1 Grantor's Rights

Until the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

4.2 General Restrictions

The Grantor shall not, without the prior written consent of the Secured Party:

(a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business; or

(b) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

4.3 Release by the Secured Party

The Secured Party may, at its discretion, at any time release from the security interest created by this Agreement any part or parts of the Collateral or any other security or any surety for the Statutory Obligation either with or without sufficient consideration therefor without thereby releasing any other part of the Collateral or any person from this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The Grantor hereby represents and warrants to the Secured Party, the matters set out below:

(a) **Incorporation and Qualifications** – The Grantor is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement.

(b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

(c) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.

(d) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the existing Collateral free and clear of any liens other than Permitted Liens.

(e) **Grantor Information** – Schedule A sets forth (a) the Grantor's jurisdiction of incorporation, (b) the location of the Grantor's registered office and business operations and records, and (c) the Grantor's exact legal name (in English and French).

(f) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and

warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

6. ENFORCEMENT

6.1 Enforceability of Security

The security hereby constituted shall become enforceable only upon the failure of the Grantor to pay the Statutory Obligations when due, and then only to the extent of the Statutory Obligations not then paid when due. The Grantor acknowledges that it has no right in any circumstance to accelerate payment of the Statutory Obligations, to apply proceeds of Collateral on account of Statutory Obligations not yet due, or to reserve or hold proceeds of Collateral on account of Statutory Obligations not yet due.

6.2 Remedies

At any time that the security hereby constituted shall have become enforceable, the Secured Party may give notice of its intention to its exercise rights and remedies hereunder. At any time ten Business Days following the giving of such notice, and unless the amounts due and owing on account of the carrying Costs at the time of the Notice have been paid, the Secured Party shall have the following rights, powers and remedies:

(a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;

(b) to make payments to parties having prior charges or encumbrances on the Collateral;

(c) to preserve, protect and maintain the Collateral;

(d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;

(e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;

(f) to enjoy and exercise in respect of the Collateral all of the rights and remedies of a secured party under the PPSA;

(g) to notify the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and,

upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and

(h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

6.3 Special Rules re Accounts

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2,

(a) all Money or other form of payment received by the Grantor in respect of the Collateral shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and

(b) the Grantor shall not adjust, settle or compromise the amount or payment of any Collateral.

6.4 Receiver as Agent

The Receiver shall be deemed to be the agent of the Grantor for the purpose of establishing liability for the acts or omissions of the Receiver and the Secured Party shall not be liable for such acts or omissions and, without restricting the generality of the foregoing, the Grantor hereby irrevocably authorizes the Secured Party to give instructions to the Receiver relating to the performance of its duties as set out herein.

6.5 Expenses of Enforcement

The Grantor shall pay to the Receiver the remuneration of the Receiver and all costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis) properly incurred by the Receiver pursuant to its appointment and the exercise of its powers hereunder, and shall pay to the Secured Party and the Receiver as required all amounts of Money (including interest thereon) borrowed or advanced by either of them pursuant to the powers set out herein, and the obligations of the Grantor to the Secured Party and the Receiver pursuant to this Section 6.5 shall be payable on demand.

6.6 Indulgences and Releases

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor,

sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

6.7 No Liability for Failure to Exercise Remedies

The Secured Party and the Receiver shall not be liable or accountable to the Grantor or to any other person for any failure to exercise any of the rights, powers and remedies set out in this Agreement, and shall not be bound to commence, continue or defend proceedings for the purpose of preserving or protecting any rights of the Secured Party, the Receiver, the Grantor or any other party in respect of the same.

6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be promptly applied as follows:

(a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;

(b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

(c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and

(d) fourth, in payment of any surplus in accordance with applicable law.

6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

6.10 Restriction on Grantor

Upon notification of the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party or the appointment of a Receiver in respect of the Collateral, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and

privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

7. GENERAL

7.1 Waiver

Any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

7.2 The Secured Party as Attorney

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
[Address]

Attention: ■
Email: ■
Facsimile: ■

In the case of the Secured Party:

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■
Facsimile: ■

7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor's rights, duties or obligations hereunder without the prior written consent of the Secured Party.

7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by the Parties.

7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

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

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC., as Secured Party

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Grantor

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

GRANTOR INFORMATION

1. **Grantor's exact legal name: Independent Electricity System Operator**

   ■ [French]

2. **Grantor's jurisdiction of incorporation: Ontario**

3. **Grantor's registered office address: ■**

4. **Location of Grantor's business operations and records: ■**

From:	John Kim
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: IESO Security Agreement
Date:	Monday, November 20, 2017 5:20:22 PM

Fyi.

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Monday, November 20, 2017 4:58 PM
To: John Kim <John.Kim@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: IESO Security Agreement

John and Opal,

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.

I have not spoken to Energy Legal on this point, but have asked for their input. They may not have been involved with these discussions, though, so I am not sure if they will have anything to add.

Please let me know if you would like to discuss further.

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:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim; Gavin He; Salman Qadir
Subject:	FW: IESO Treasury Policy - likely revising for June 2017
Date:	Tuesday, June 06, 2017 8:47:21 AM
Attachments:	Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx

I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).

From: Ronald Kwan
Sent: Monday, June 05, 2017 6:00 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:

• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Manager, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 **Permitted Borrowings:**

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts, including deferral accounts and timing differences, pertaining to the IESO's mandate under the Ontario~~'s~~ Fair Hydro Plan Act~~program~~;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

Commented [RK1]: Should the wording provide some flavor and legislative context, as per some of the other sub-clauses?

~~v.~~vi. As directed by the Minister of Energy.~~;~~

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

From: Bruno Amara
To: Ronald Kwan
Cc: Salman Qadir; John Kim; Gavin He
Subject: FW: IESO Treasury Policy - likely revising for June 2017
Date: Monday, June 05, 2017 2:40:49 PM
Attachments: Item 8(iii) BLACKLINED Treasury Policy June 14 2017.docx
Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy vCEFD.docx

---

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few

banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5

www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Manager, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts pertaining the Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and
   ~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*Treasury Bills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

From:	Ronald Kwan
To:	Marianne Nguyen (MCYS)
Cc:	Jonathan Tekle (CAB)
Subject:	FW: IESO Treasury Policy - likely revising for June 2017
Date:	Wednesday, June 14, 2017 5:25:07 PM
Attachments:	Item 8(iii) BLACKLINED Treasury Policy June 14 2017.pdf Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy.pdf

Hi Marianne,

Just a heads up. The IESO is amending its treasury policy to accommodate what it needs to do under the Fair Hydro Plan.

We had received a draft a couple weeks ago, and the proposed revision was just approved by the IESO Board.

The IESO is required under regulation to seek the Minister of Finance's approval of its treasury policy, so a request should be forthcoming soon.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:

• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for

the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Director~~Manager~~, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*TBills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir; Gavin He
Subject:	FW: IESO Treasury Policy for Approval - Reg 280/14
Date:	Tuesday, June 20, 2017 3:35:09 PM
Attachments:	Item 8(iii) BLACKLINED Treasury Policy June 14 2017.pdf Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy.pdf IESO Finance Policy Update June 2017 Reg 280-14.pdf

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Director~~Manager~~, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*TBills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

June 15, 2017

Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

The Honorable Charles Sousa
Minister of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON
M7A 1Y7

Dear Minister:

Re: Independent Electricity System Operator ("IESO")
IESO Treasury Policy (version June 14, 2017)

Ontario Regulation 280/14 (the "Regulation"), as amended, prescribes requirements for the IESO regarding its treasury activities. The Regulation requires the IESO to adopt a statement setting out the IESO's investment, borrowing, and financial management policies and procedures (known herein as the "IESO Treasury Policy").

The IESO's Board of Directors approved the attached revised (*black-lined to highlight the changes made*) IESO Treasury Policy on June 14, 2017.

As required by the Regulation, the IESO submits the attached revised IESO Treasury Policy for your review and requests your approval of the same.

Please contact me (905.403.6944), Kimberly Marshall, IESO Chief Financial Officer (416.969.6232), or John Rattray, IESO General Counsel (416.506.2856) for any questions you or your staff may have regarding this request.

Sincerely,

Anthony Martinello
Director, Treasury and Pension Operations

Attachment: IESO Treasury Policy (version June 14, 2017)

cc: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: IESO credit facility - Intercept Letter
Date:	Tuesday, October 24, 2017 10:34:56 AM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v2.docx

Fyi

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

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 $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~~The~~ 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY confirm and the OFA acknowledges ~~and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] 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.

Commented [ESP1]: Defer to Corporate?

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 ~~the Ministry of Energy ("~~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~~Under~~ the intercept provision is exercised, ~~which shall be included in the Loan Agreements,~~ the IESO ~~also~~ 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.

DRAFT

- 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 any other agencies, bodies or other means.

Formatted: List Paragraph, No bullets or numbering

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.

DRAFT

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 $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~~The~~ 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY confirm and the OFA acknowledges ~~and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] 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.

Commented [ESP1]: Defer to Corporate?

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 ~~the Ministry of Energy ("~~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~~Under~~ the intercept provision is exercised, ~~which shall be included in the Loan Agreements,~~ the IESO ~~also~~ 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.

DRAFT

- 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 any other agencies, bodies or other means.

Formatted: List Paragraph, No bullets or numbering

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.

DRAFT

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	FW: IESO credit facility - Intercept Letter
Date:	Tuesday, October 24, 2017 2:39:10 PM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx.msg

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains

information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Lisa Stein []
To: John Kim [John.Kim@ofina.on.ca]
CC: Sarah Neville [Sarah.Neville@ofina.on.ca]; Sarah Harris [Sarah.Harris@ofina.on.ca]; William Tan [William.Tan@ofina.on.ca]; Gavin He [Gavin.He@ofina.on.ca]
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date: Tuesday, October 24, 2017 14:31:23
Attachment 1: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

---

Edits as requested. I've removed Ron's edits as well.

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

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 $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~~The~~ 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 OFA, IESO and the Ministry of Energy ("ENERGY") acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] 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.

Commented [ESP1]: Defer to Corporate?

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 ~~the Ministry of Energy ("~~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~~Under~~ the intercept provision is exercised, ~~which shall be included in the Loan Agreements,~~ the IESO ~~also~~ 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.

DRAFT

- 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 any other agencies, bodies or other means~~.

Formatted: List Paragraph, No bullets or numbering

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.

DRAFT

From: Lisa Stein []
To: John Kim [John.Kim@ofina.on.ca]
CC: Sarah Neville [Sarah.Neville@ofina.on.ca]; Sarah Harris [Sarah.Harris@ofina.on.ca]; William Tan [William.Tan@ofina.on.ca]; Gavin He [Gavin.He@ofina.on.ca]
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date: Tuesday, October 24, 2017 14:31:23
Attachment 1: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

---

Edits as requested. I've removed Ron's edits as well.

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

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 $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~~The~~ 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 OFA, IESO and the Ministry of Energy ("ENERGY") acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] 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.

Commented [ESP1]: Defer to Corporate?

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 ~~the Ministry of Energy ("~~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~~Under~~ the intercept provision is exercised, ~~which shall be included in the Loan Agreements,~~ the IESO ~~also~~ 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.

DRAFT

- 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 any other agencies, bodies or other means~~.

Formatted: List Paragraph, No bullets or numbering

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.

DRAFT

From:	John Kim
To:	Ronald Kwan
Subject:	FW: IESO credit facility
Date:	Tuesday, September 26, 2017 2:51:20 PM

FYI, this is the internal back and forth.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under "Conditions Precedent", the OFA Lending Policy provides that the OFA must ensure that it has an "appropriate" intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for 'carve-outs' in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 11:24 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local

distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, September 26, 2017 11:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.
We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 2:50:56 PM

Fyi, this is the last email from Anthony.

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, September 26, 2017 1:58 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO credit facility

Please re-consider.
The IESO and OPG are currently negotiating terms for the fair hydro program and servicing – and OPG may consider this letter to impact their position on some aspects.
The point of sharing it with OPG is precisely to see if they do have any concerns as I wish to avoid any future unfavourable outcomes that may result by not sharing.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 26, 2017 11:48 AM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville; Lisa Stein
Subject: RE: IESO credit facility

Hi Anthony,

We had a quick internal discussion and we are not quite there on the need to share this with OPG and their lawyers. If you feel strongly about it then I will take it back to get that direction but would it be possible to manage any concerns via proposed edits to the draft letter agreement?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.
We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch

Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 4:32:04 PM

Fyi.

From: Lisa Stein
Sent: Tuesday, September 26, 2017 4:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Yes, your understanding is correct. There are currently no "exceptions" to or specific "carve outs" from the intercept requirement in the Policy and I agree with Toby. I was trying to address the question you had raised in your earlier e-mail.

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 4:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Lisa, Toby,

I want to clarify that based on the approach we are moving forward with, the understanding of the OFA Lending Policy should be such that where there are no appropriation by Legislature, there is nothing contemplated by the OFA Lending Policy to intercept. Some of us in CEFD are a bit concerned about the wording 'carve-outs' and 'perhaps' below. I think Toby referred to 'carve-outs' to refer to exceptions to what is subject to the intercept. With the draft letter agreement, we are taking a position that there is nothing to intercept and that we are agreeing to put the intercept clause in as in the future there could be appropriations by Legislature for the IESO at which point, it would become necessary in the future which would be a prudent thing to have.

I was getting Ron in the loop as potentially ready to manage the process with OPG.

Let me know pls. if I am off base on any of the above.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under "Conditions Precedent", the OFA Lending Policy provides that the OFA must ensure that it has an "appropriate" intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for 'carve-outs' in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 11:24 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, September 26, 2017 11:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is

referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in

the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.
We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx
Date: Monday, November 20, 2017 8:57:26 AM
Attachments: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

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 for the security agreement. 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 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 the OFA to make the same request 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*.

- With the 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 flown-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.]

- The OFA included the requested changes in the OFA credit facilities, providing a precedent of having considered the changes/inclusion of the same request. Treating the current request differently by

Commented [GH1]: We mentioned the security agreement in the above paragraph already, so we don't think we need to mention this again here.

Commented [JK2]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [GH3]: Would you be able to list out some key differences related to this scenario?

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.

RECOMMENDATIONS

- In order to remain consistent with the language recently incorporated in existing IESO-OFA agreements, OFA staff are of the view that the exisiting 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 15, 2017

From: John Kim
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean_Markup.docx
Date: Tuesday, November 21, 2017 3:49:57 PM
Attachments: IESO-OEFC Note_v7_Markup.docx

Hi Ron,

CMD-Documentation responded. Pls. have a look.

Thanks,

John

From: Opal Kandelas
Sent: Tuesday, November 21, 2017 3:49 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John,

The note looks good. I've made a couple of tweaks.
Thanks,
Opal

From: John Kim
Sent: Tuesday, November 21, 2017 2:47 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi Mike, Opal,

I've updated the note further, as discussed with Mike, to clarify. I have comments in two areas. Pls. let me know if you have any comments on them or if I am mistaken.

Thanks,

John

From: John Kim
Sent: Monday, November 20, 2017 4:02 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>

Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Thanks Opal…reflected some of Ron's comments but stayed with your edits where there were conflicts.

Mike, let me know pls. if you're okay with the note and the recommendation.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John, Mike,

In the interest of time, I'm sending comments on the note to you both.

Thanks,
Opal.

From: John Kim
Sent: Monday, November 20, 2017 2:39 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Thanks Opal. Ron hasn't reviewed it yet. Hoping to build a consensus.

From: Opal Kandelas
Sent: Monday, November 20, 2017 2:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John,

I'm reviewing the note. Be back to you shortly.

Thanks,
Opal

From: John Kim

Sent: Monday, November 20, 2017 12:42 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean_Markup.docx

Hi Opal,

Let me know if you're OK with this version. I put CMD – Operations in square bracket pending your review.

Thanks,

John

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.
  - The security agreement is not limited to the Clean Energy Adjustment funds collected by the IESO only.

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

- 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.
  - 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.

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.

- 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~~y~~ are "subject to such other terms as OEFC deams 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 exisiting 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

From: John Kim
To: Ronald Kwan
Subject: FW: IESO
Date: Monday, November 27, 2017 4:17:47 PM

Hi Ron,

Would you have any issues on our end? I am happy to defer this to CMD and CMD seems to be open to the idea of having IESO share. As long as TD treats it as confidential, not sure if we would have any issue from the policy side of things.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, November 21, 2017 10:47 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: IESO

Please move forward and seek the necessary approvals. TD wants to read the $2B agreement to ensure IESO has FH liquidity during the 4 years.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 20, 2017 5:17 PM
To: Anthony Martinello
Cc: Victor Buza; Gavin He; William Tan
Subject: RE: IESO

Hi Anthony,

I think the steps we would take to allow it, if at all, could be quite onerous and time-consuming. Are there any specific concern they have that we should be able to address without actually letting them see the agreement?

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, November 20, 2017 5:05 PM
To: John Kim <John.Kim@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO

John, William,

TD Bank has asked to review the $2B Fair Hydro credit facility executed between IESO and OFA.

TD wants to gain comfort (themselves) that the credit facility is going to support the IESO's fair hydro transactions during the next 4 years.

I have verbally assured them of the above, but they wish to review themselves.

Let me know if I may share and TD will treat the document as confidential.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Cc:	Deena Padamadan; Bruno Amara; Salman Qadir
Subject:	FW: IESO_OFA FEP 2017 Credit Letter
Date:	Friday, May 12, 2017 2:14:13 PM
Attachments:	IESO_OFA FHP 2017 Credit Letter.docx

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is

strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 12, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the proposed Fair Hydro Plan (FHP) to reduce electricity prices for eligible consumers in the province. Proposed legislation was introduced this month for the FHP. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that in order to support the IESO's role in FHP implementation it will need greater credit liquidity than currently exists.

An existing credit facility between the IESO and the Ontario Financing Authority (OFA) is currently available for $975 million which includes support for the current Regulated Price Plan (RPP) program. The IESO proposes that a separate and additional credit facility be provided by either the OFA or Ontario Electricity Financial Corporation (OEFC) to support only the FHP credit needs. A separate facility for the FHP is preferable to ensure operational efficiency and interest tracking.

IESO's FHP Credit Requirements and Rationale

Below we have outlined the IESO's expected credit needs including the current OFA facility as follows:

	OFA:IESO Facility	New FHP facility
Current credit facilities	$975 million	$ -
Reduction due to FHP	($500 million)	$ -
Increase due to FHP	$ -	$2,000 million
Totals Credit Facilities	$475 million	$2,000 million

The above $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. In addition, the IESO has had recent discussions with OFA staff to explain the rationale to support the overall $2,000 million FHP commitment.

We suggest the new FHP credit facility consider the following key provisions:

- 5 year term - to align with the FHP's initial period of deferral of electricity prices plus a contingency period (i.e. to September 30, 2022);
- interest charge - to be Province's cost of funds for borrowing with a similar term as determined by OFA / OEFC plus 0.25 percent per annum;
- Draws - to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers; and
- Existing $975 million OFA facility : draws to permit for FHP purposes until a new separate credit agreement for FHP purposes has been made available;

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facilities and we will provide such evidence for your records.

We appreciate your continued support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: FW: Indemnity Draft Briefing Note
Date: Thursday, June 15, 2017 9:14:16 AM
Attachments: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx

---

Fyi.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, June 14, 2017 9:23 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: Indemnity Draft Briefing Note

John,
We are not able to comment on the accounting implications of the indemnity request. Do you have anything from OPG Finance regarding accounting considerations? We would just be planning to consolidate OPG on a modified equity basis, assuming that the Trust is controlled by it for accounting purposes. It is our expectation that OPG and its auditors are assessing potential implications of the indemnity to the accounting treatment of the Trust (i.e. controlled by OPG v. controlled by the Province).
I will review the note and provide comments to Bruno.
Thanks.
Nadine

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-13-17 1:17 PM
To: Petsche, Nadine (TBS); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Patel, Bharat (TBS)
Cc: Kim, John (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Subject: FW: Indemnity Draft Briefing Note

Hi

Attached for your information is a draft briefing note on Ministry of Energy's s. 28 (FAA) request for approval of indemnities for OPG and IESO. A number of clarifications have been requested from OPG/IESO mainly related to the scope of the indemnity request.

This draft note is also intended to facilitate coordination as necessary in various ongoing discussions such as IESO/OPG indemnities, provincial guarantees, PiLs exemption. I'm not sure if the indemnity may also have implications for accounting treatment.

Comments welcome.
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

- The Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.
- The Ministry of Energy indicates both OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").
- In addition, statutory protections do not indemnify for costs relating to defending a claim.

Commented [A1]: Would Energy think it fair to add this wording to its business case?

RECOMMENDATION

- IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

Commented [A2]: This is placeholder language. TBD/TBC

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- The fiscal impact of a future indemnity claim is unknown. Ministry of Energy ("MENE") states that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
- An line item or an appropriation for the contingent liability is not required by the Ministry of Energy at this time.
- An approval would be required for a voted appropriation for the Ministry of Energy to make payments if indemnity was called upon.
- MENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

Commented [A3]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Whereas the contingent liability table says it is low.
Can we have MENE to put this right up front. Need a bit of a narrative – what we [Energy] believe and why.

Commented [BA4]: We need to make clear what this means. Is it meaningful to claim to be responsible for funding if amount is unknown? And bullets above note ministry would need an approval for an appropriation. (This could include no approval and instruction to manage).

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Who the Indemnity Applies to

- The indemnity is being given in favour of "Protected Persons" which comprises OPG, each of OPG's subsidiaries [NTD: We have not received confirmation of whether the financing entity is a subsidiary of OPG] and each of their respective directors, officers and employees.

- Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim, including a broad range of types of damages. This also includes punitive and a broad range of types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for defending themselves. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

What indemnities are being provided?

- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

- The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

The Indemnity Agreement includes a waiver of claim provision, which is not a normal provision for an indemnity agreement.

- This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan. This does not apply to claims for willful misconduct, dishonesty or gross negligence.

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

ANALYSIS

Commented [A5]: s.28 notes usually talk about mitigation, as does the contingent liability table. Anything we can add here?

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from all claims, liabilities, costs, losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals in relation to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHP (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or a subsidiary).

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase of the deferred assets ("regulatory assets") under the Global Adjustment ("GA").

Commented [A6]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A7R6]: Comments from MOF Legal:

Even if Board has indemnities from OPG, wouldn't be able to cover as is not in the best interest of corporation.

MOF Legal: up to Energy to tell us. OPG must have given Board members the normal indemnities.

Bruce Lease one covers the not in the best interest of corporation.

OBCA indemnity: immunity from suit. May indemnity corp. directors and officers. Limited to indemnity in good faith. Other specific provisions exist in EA and FHA.

IESO covers quite a bit. Including Board, directors, employees.

MENE states that the OFHP Act activities of both OPG and the IESO would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Commented [A8]: Fair to insert?

Commented [A9]: Would Energy change this to "historical" in its business case?

Commented [A10R9]: MOF Legal: OPG Board appears to be concerned some would say not in good faith despite objects being changed.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could affect OPG and IESO's willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Commented [A11]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A12R11]: IESO is indirectly involved. Not clear EA 19(1) for IESO. Unclear whether it'd protect from US suit. OFA Board also raised. MOF Legal: this is a valid point.

Commented [A13]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are requesting to be indemnified for their activities that may be found to have not been conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected to carry out activities under the OFHP that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability.

- The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation.

  - Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?
- Statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees".
  - Since OPG is falls under Ontario's *Business Corporations Act* (OBCA), directors and officers of OPG are subject to the standard set out in that Act which includes a limitation on indemnities from corporations, whereby indemnities can only be given to the extent that the directors and officers carried out their activities in good faith and in the best interest of the corporation. The proposed Provincial indemnity, however, would not be restricted to that standard.
  - The standard applicable to directors of IESO is set out in s. 12 of the *Electricity Act, 1988*, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
  - So the standard is similar for both OPG and IESO directors.

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

  "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

  "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Commented [A14]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Commented [BA15]: Does this mean
- employee of the Province or employee of OPG, or
- employee of the Province or OPG (i.e., the corporation itself)?

2. Potential for Fiscal Exposure of the OFHP Act

In addition to the potential fiscal impact due to a call on the indemnity, there may be a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and

the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

Commented [A16]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

Commented [A17]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.
- Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:
  - IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.
  - OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- The government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

DRAFT

From:	John Kim
To:	Ronald Kwan
Cc:	Gavin He; Usman Zahid
Subject:	FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date:	Wednesday, October 25, 2017 12:42:08 PM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 25.docx

Fyi.

From: Gavin He
Sent: Wednesday, October 25, 2017 11:03 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

We have put the letter in a letter agreement format as you suggested below. Could you please take a look and let us know if this is the right format?

Thanks,
Gavin He

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:35 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Please send me a final draft for review

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:34 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

You just need to add letter head and signature titles and lines

From: John Kim
Sent: Wednesday, October 25, 2017 9:31 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Thanks Lisa.

Could you help us put this in a letter agreement format, with signing lines, etc? We can do the letter head, etc.

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:25 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

I am fine with #1 below. In any event, as previously discussed, OCCSDC is an agent of MOECC, not Energy.

From: John Kim
Sent: Tuesday, October 24, 2017 5:42 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

We can push back saying – we are already saying payments that are not appropriations of Energy is already ruled out. But then there is a risk of delay. If we are specifically ruling out this Ontario Climate Change solutions Deployment Corp. that is a known exemption, is it a problem to include?

From: John Kim
Sent: Tuesday, October 24, 2017 5:25 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

Are we able to work with the #1 below?

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 5:18 PM
To: John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John.

1. The changes made are acceptable except for those made to the penultimate paragraph – please amend this para to read as follows:

> 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.

2. Re the "[Energy to confirm]" comment, we are ok with the sentence as written and don't need to confirm anything further.

3. Kimberly Marshall would sign the Intercept Letter on behalf of IESO.

Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 24, 2017 4:11 PM

To: Tom McKinlay (MAG); Victor Buza
Cc: Lisa Stein; Anthony Martinello; Michael Boll; Gavin He
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Tom, Victor,

I don't yet have final go ahead but we are close so sharing the latest version. Pls. advise if any issue with the attached. Copying Michael at Tom's request.

Also for the square bracketed part [Energy to confirm], pls. advise if any issue with that part as well.

Pls. also let me know who at IESO would sign.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 $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.

For further certainty, the OFA and the Ministry of Energy ("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.

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.

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.

Ontario Financing Authority

by:_____

name: Ronald Kwan

title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA

c. Gadi Mayman, Chief Executive Officer, OFA

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

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 $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.

For further certainty, the OFA and the Ministry of Energy ("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.

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.

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.

Ontario Financing Authority

by:_____

name: Ronald Kwan

title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA

c. Gadi Mayman, Chief Executive Officer, OFA

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

From:	John Kim
To:	Ronald Kwan
Subject:	FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup3.docx
Date:	Thursday, September 21, 2017 11:38:43 AM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup3.docx

Fyi.

From: Sarah Neville
Sent: Thursday, September 21, 2017 11:38 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup3.docx

Hi John – tweaked the acknowledgement to make it mutual as between all and to narrow the reference to appropriations so that it is clear it is not any MOE appropriation but only that destined for the IESO.

Sarah

I am writing in relation to the Independent Electricity System Operator's (IESO)~~'s~~ request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to $2 billion ~~from the OFA~~ (the "New Credit Facility") to support ~~its~~the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017.*

~~Pursuant to~~Under the OFA Lending Policy, the OFA ~~is~~ required ~~to include~~ an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The 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 ~~from money appropriated by the Legislature for payment to the public body~~. The OFA, IESO and the Ministry of Energy ("MOE") ~~I~~ acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for the IESO [Energy to confirm] and the intent of such intercept ~~a~~ provision is that it would ~~e~~ apply if and when amounts were to be appropriated for payment 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 the Ministry of Energy ("MOE") 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").

- ~~As such, t~~The OFA, the IESO, and MOE 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 MOE agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance ~~is~~ 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").
  - Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

Commented [RK1]: I had thought the earlier discussion contemplated an acknowledgement / confirmation that at this time there are currently no amounts appropriated by the Legislature for the IESO and that these provisions would apply if amounts were appropriated in the future.

Has there been an update to that thinking?

Commented [JK2]: Updated.

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Indent: Left: 0.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

DRAFT

- Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with MOE and seek MOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, MOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by MOE. Upon request, MOE will provide similar information to the Minister of Finance.

- MOE 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 to the IESO, MOE 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.

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.

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

DRAFT

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He
Subject:	FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date:	Wednesday, October 25, 2017 2:17:16 PM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 25_v3.docx IESO-OFA - FHP LoC - Intercept_Sep19-2017.docx

Pls. also see attached note that we had shared with Energy in the past.

We were going to use it for the blue sheet sign-off from OFA Legal.

Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 1:57 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Here you go.

Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 1:49 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Ron,

There was a version control issue. We will fix and resend shortly.

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 1:16 PM
To: John Kim <John.Kim@ofina.on.ca>

Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John,

The "confirm" paragraph was dropped altogether, and the new IESO bullet that was at the end was moved up to that part of the letter instead? I likely missed the flag on that change. Is Legal okay with that?

Ron

From: John Kim
Sent: October-25-17 12:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Fyi.

From: Gavin He
Sent: Wednesday, October 25, 2017 11:03 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

We have put the letter in a letter agreement format as you suggested below. Could you please take a look and let us know if this is the right format?

Thanks,
Gavin He

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:35 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-

rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Please send me a final draft for review

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:34 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

You just need to add letter head and signature titles and lines

---

From: John Kim
Sent: Wednesday, October 25, 2017 9:31 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Thanks Lisa.

Could you help us put this in a letter agreement format, with signing lines, etc? We can do the letter head, etc.

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:25 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

I am fine with #1 below. In any event, as previously discussed, OCCSDC is an agent of MOECC, not Energy.

From: John Kim
Sent: Tuesday, October 24, 2017 5:42 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-

rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

We can push back saying – we are already saying payments that are not appropriations of Energy is already ruled out. But then there is a risk of delay. If we are specifically ruling out this Ontario Climate Change solutions Deployment Corp. that is a known exemption, is it a problem to include?

From: John Kim
Sent: Tuesday, October 24, 2017 5:25 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

Are we able to work with the #1 below?

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 5:18 PM
To: John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John.

1. The changes made are acceptable except for those made to the penultimate paragraph – please amend this para to read as follows:

> 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.

2. Re the "[Energy to confirm]" comment, we are ok with the sentence as written and don't need to confirm anything further.

3. Kimberly Marshall would sign the Intercept Letter on behalf of IESO.

Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 24, 2017 4:11 PM
To: Tom McKinlay (MAG); Victor Buza
Cc: Lisa Stein; Anthony Martinello; Michael Boll; Gavin He
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Tom, Victor,

I don't yet have final go ahead but we are close so sharing the latest version. Pls. advise if any issue with the attached. Copying Michael at Tom's request.

Also for the square bracketed part [Energy to confirm], pls. advise if any issue with that part as well.

Pls. also let me know who at IESO would sign.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named

recipient(s), please notify the sender immediately and delete this e-mail message.

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY") confirm and the OFA acknowledge~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO ~~[Energy to confirm]~~ 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.

Commented [ESP1]: Defer to Corporate?

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.

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.

~~**Ontario Financing Authority**~~

~~by:_____~~

~~name: Ronald Kwan~~

~~title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA~~

~~c. Gadi Mayman, Chief Executive Officer, OFA~~

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

Formatted: Underline

Formatted: Justified, Space After: 10.85 pt, Line spacing: Exactly 12.75 pt, Font Alignment: Baseline

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: Bold, Font color: Black

Formatted: List Paragraph

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY") confirm and the OFA acknowledge~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO ~~[Energy to confirm]~~ 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.

Commented [ESP1]: Defer to Corporate?

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.

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.

~~**Ontario Financing Authority**~~

~~by:_____~~

~~name: Ronald Kwan~~

~~title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA~~

~~c. Gadi Mayman, Chief Executive Officer, OFA~~

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

Formatted: Underline

Formatted: Justified, Space After: 10.85 pt, Line spacing: Exactly 12.75 pt, Font Alignment: Baseline

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: Bold, Font color: Black

Formatted: List Paragraph

BACKGROUND NOTE
OFA -- IESO CREDIT FACILITY & THE INTERCEPT PROVISION REQUIRED UNDER THE OFA'S LENDING POLICY

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet].

In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the 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 to the OFA under a loan agreement.

Per the requirements of the OFA's Lending Policy, the OFA has reached out to the Ministry of Energy and IESO to fulfill the requirement to include an intercept provision in credit facility agreements with the IESO.

- The OFA Lending Policy, as approved by the OFA Board, provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following intercept provision requirement:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

- The new FHP credit facility, with the required intercept clause, will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility) which will also require the intercept clause to be added.

- Including an intercept provision in the credit facility agreements with the IESO is expected to have no practical impact as the IESO receives no appropriations from the Province of Ontario [Energy to confirm], but would bring the lending facilities onside with the requirements of the OFA Lending Policy and be consistent with CIPA.

Electricity Finance Branch / Corporate and Electricity Finance Division / Ontario Financing Authority
September 19, 2017

From: John Kim
To: Ronald Kwan
Subject: FW: Intercept provision
Date: Friday, October 13, 2017 4:50:06 PM

Fyi. Checking now with TBS.

From: Lisa Stein
Sent: Thursday, October 12, 2017 3:31 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: Intercept provision

Hi John,

If I understand your question correctly, the answer is that the Ministry of Environment and Climate Change (MOECCC) is not required to be a party to the FHP credit facility intercept MOU/letter agreement. The letter agreement is intended to be between the "responsible ministry" (in this case Ministry of Energy (MOE)) and the public body (in this case IESO).

The intercept would apply to money appropriated by the Legislature for "payment to the public body". Therefore, money appropriated by the Legislature for payment to a different ministry, a different public body, or to MOE (or an agency of MOE, etc.) for a program *unrelated* to the IESO, would not be caught by the intercept.

I've included an excerpt below which should be helpful in this regard. Please let me know if you would like to discuss further.

Lisa

Excerpt from OFA Lending Policy (emphasis added):

Pursuant to section 23 of the *Capital investment Plan Act* and prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

From: John Kim

Sent: Thursday, October 12, 2017 3:01 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Intercept provision

Hi Sarah, Lisa,

I have a request for a legal interpretation of the OFA Lending Policy.

The OFA Lending Policy as we currently have it, does it provide for a requirement [of the MOU/the letter agreement we have drafted] other than one ministry responsible for the public body? The way I read the policy, I believe there should be one Ministry that provides oversight of the public body.

This morning, at a meeting, IESO representative raised the issue of their managing the government's implementation of Green ON Fund (?). I am presuming that the same type of arrangement applies for this program as the Energy's program, i.e. no appropriation for IESO's operation, and this is TBD but would like to know how implementation of such a program funded by another ministry would factor into what we are looking to do.

The purpose of the question is to entertain whether the MOU/the letter agreement needs to include MOECC or not. I don't think so but would appreciate your assessment.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

From: Deena Padamadan
To: Ronald Kwan
Subject: FW: Minister"s Directive IESO FHP 2017 v3
Date: Thursday, June 15, 2017 2:05:06 PM
Attachments: Directive IESO FHP 2017 v3.docx

Hi Ron,

Please see below and attached for your review from EFB.

Thanks,
Deena

-----Original Message-----
From: Salman Qadir
Sent: Thursday, June 15, 2017 1:30 PM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Minister's Directive IESO FHP 2017 v3

Hi Deena,

Attached, for Ron's review and any comment, is the latest draft of the Minister's Directive that will direct the OFA to provide the $2 billion revolving credit facility to the IESO for its role under the ONFHP. OFA legal and Documentation have reviewed this and we're preparing an approval package. We just wanted to get this on Ron's radar and for any additional feedback he may have.

Thank you,
Salman

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.

[The OFA will be borrowing funds for this requested credit facility under the authority of OIC ###, pursuant to which the Minister of Finance is authorized to lend a maximum of $2 billion.]

Commented [SQ21]: Based on discussions with OFA legal (including Ken Russell), this can be deleted as it is administrative in nature. Suggest deleting.

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.

../2

DRAFT

- 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: , 2017

Charles Sousa
Minister of Finance

DRAFT

From: Deena Padamadan
To: Ronald Kwan
Subject: FW: Minister"s Directive IESO FHP 2017 v3
Date: Friday, June 16, 2017 2:08:12 PM

Hi Ron,

Please see John's query below re. spread discussion.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Friday, June 16, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Minister's Directive IESO FHP 2017 v3

Thanks Deena. I'm thinking that the appropriate spread discussion is one Ron will have with Gadi, etc?

John

-----Original Message-----
From: Deena Padamadan
Sent: Thursday, June 15, 2017 5:08 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Minister's Directive IESO FHP 2017 v3

Hi Salman,

Please see Ron's response below.

Thanks,
Deena

-----Original Message-----
From: Ronald Kwan
Sent: Thursday, June 15, 2017 5:01 PM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Minister's Directive IESO FHP 2017 v3

Hi,

I'm okay with a deletion, as per the comment. We'll have to think about the appropriate spread.

Ron

-----Original Message-----
From: Deena Padamadan
Sent: June-15-17 14:05
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Minister's Directive IESO FHP 2017 v3

Hi Ron,

Please see below and attached for your review from EFB.

Thanks,
Deena

-----Original Message-----
From: Salman Qadir
Sent: Thursday, June 15, 2017 1:30 PM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Minister's Directive IESO FHP 2017 v3

Hi Deena,

Attached, for Ron's review and any comment, is the latest draft of the Minister's Directive that will direct the OFA to provide the $2 billion revolving credit facility to the IESO for its role under the ONFHP. OFA legal and Documentation have reviewed this and we're preparing an approval package. We just wanted to get this on Ron's radar and for any additional feedback he may have.

Thank you,
Salman

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir; Gavin He
Subject:	FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx
Date:	Wednesday, June 07, 2017 4:10:35 PM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Ron,

Pls. see attached note. Comments are welcome.

Fyi, spoke to Nadine before the meeting at 2pm about equity injection (bv of shares) and also this material that we would be coming to them for input/comments.

Thanks,

John

From: Salman Qadir
Sent: Wednesday, June 07, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi,

Attached is the first draft of the note for FAA section 28 for the indemnities. I'm sure MOF legal will have language to edit/add.

Saved here:
Z:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Salman

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements") in favour of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") with respect to their participation under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

- This Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.

RECOMMENDATION

- IESO and OPG have stated that the requirement of these indemnities is required for their participation in the OFHP Act. In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("MOE") states that the likelihood of this indemnity being called upon is low and should it be called, the fiscal exposure is unquantifiable.
- MOE has confirmed in its request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

ANALYSIS

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify and hold harmless the IESO and OPG (and its subsidiaries) as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out the activities related to the OFHP Act.

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, to facilitate the sale of the deferred assets under the Global Adjustment ("GA") structure.

MOE states that both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate.

If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Agreements the Minister of Energy is anticipated to sign.

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are essentially requesting to be indemnified for their activities that may not be seen to be conducted in "good faith" for their respective corporations.

Since IESO and OPG are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts".

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

> *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."*

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

2. Potential for Fiscal Exposure of the OFHP Act

On May 24, 2017, the Ontario Auditor General ("AG") provided remarks to The Standing Committee on Justice Policy on the then proposed *Ontario Fair Hydro Plan Act, 2017.* The AG commented that the GA structure that does not impact the Province's net debt or annual deficit is legislated accounting and not in accordance with Canadian Public-Sector Accounting Standards.

With the Province providing guarantee agreements, financial support through credit facilities and these agreements to indemnify the IESO and OPG, this could weaken the case that the Province is relying that underpins the GA structure.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer relative to what the bills would otherwise have been without the OFHP.
- The proposed 25 per cent rate relief measure include the 8 per cent rebate that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016 and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- Changes to the Global Adjustment ("GA") are proposed to be a component of the 25 per cent rate relief under the OFHP.
- The Government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.
- The implementation of the OFHP Act will involve the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities.

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx
Date: Thursday, June 08, 2017 5:14:52 PM
Attachments: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_Markup MOFLegal.docx
OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_Markup MOFLegal+EFB.docx

---

Hi Ron,

This is still very much work-in-progress with Toby signalling additional materials either following Energy Legal's response or before.

The second attachment is with some additional edits from EFB.

We are aiming to chat with Toby tomorrow AM to close a number of loose ends.

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, June 08, 2017 3:26 PM
To: John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

John – please see attached some initial comments. This will obviously have to evolve as we hear back on the final form and updated materials.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June 8, 2017 8:16 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Bruno Amara; Salman Qadir
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Malle, Toby,

Could you pls. review and provided any edits?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 07, 2017 6:02 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi John,

Thanks. A few comments and suggestions.

Ron

From: John Kim
Sent: June-07-17 16:11
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Ron,

Pls. see attached note. Comments are welcome.

Fyi, spoke to Nadine before the meeting at 2pm about equity injection (bv of shares) and also this material that we would be coming to them for input/comments.

Thanks,

John

From: Salman Qadir
Sent: Wednesday, June 07, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi,

Attached is the first draft of the note for FAA section 28 for the indemnities. I'm sure MOF legal will have language to edit/add.

Saved here:
Z:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Salman

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act ("*FAA*")* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries –and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the ~~participation~~implementation of the Ontario Fair Hydro Plan ("ONFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

- The~~is~~ Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.

RECOMMENDATION

- IESO and OPG have stated that ~~the requirement of~~ these indemnities are~~is~~ required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

Commented [A1]: Is this expected, and when? Do we have a draft?

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("M~~O~~EENE") states that the likelihood of this indemnity being called upon is low and ~~should it be called,~~ the fiscal exposure is unquantifiable at this time, should it be called.
- M~~O~~ENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

Commented [A2]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Where does it say that the likelihood of indemnity being called upon is low?

Commented [A3]: Is TBS okay with this?

Commented [A4]: Where does it say this?

ANALYSIS

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from ~~any~~ all claims, liabilities, costs, ~~or~~ losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals ~~arise to the corporation, him or her (respectively)~~ in relation ~~of~~to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the Fair Hydro Plan (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or ~~s~~a subsidiary). ~~as a result of their direct roles in carrying out the activities related to the OFHP Act~~.

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase~~sale~~ of the deferred assets under the Global Adjustment ("GA") structure ("regulatory assets").

M~~O~~ENE states that ~~both OPG and the IESO are anticipated to carry out~~the OFHP Act activities of both OPG and the IESO ~~that~~ would otherwise fall outside the scope of their typical business activities and corporate mandates. According to ENE, ~~T~~this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could ~~impa~~affect ~~the~~ OPG and IESO ~~directors~~'s willingness to undertake such activities, jeopardizing the successful implementation

Commented [A5]: It doesn't say "direct".

Commented [A6]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A7]: Fair to insert?

Commented [A8]: Would Energy change this to "historical" in its business case?

Commented [A9]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A10]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements the Minister of Energy is ~~anticipated~~proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are ~~essentially~~ requesting to be indemnified for their activities that may be found to have not be~~en seen to be~~ conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are anticipated to carry out activities in the implementation of the OFHP Act that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability (statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees"). Since OPG is an OBCA corporation, directors and officers of OPG are subject to the standard set out in that Act ~~which is….~~[NTD: Should this reference the OBCA standard?]. The standard applicable to directors of IESO is set out in s. 12 of the Electricity Act, i.e. to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. So the standard is similar for both OPG and IESO directors. The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation. Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

> *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence,*

Commented [A11]: I think we need to include a subsection on existing indemnities, and when the proposed indemnities would not apply.

And lead this sub-section with the protections under statute, and why they may not be considered sufficient – claims on "good faith" as a question of fact to be considered by a court if a claim is brought forward.

And we should mention the waiver too.

Commented [A12]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

2. Potential for Fiscal Exposure of the OFHP Act

~~On May 24, 2017, the Ontario Auditor General ("AG") provided remarks to The Standing Committee on Justice Policy on the then proposed *Ontario Fair Hydro Plan Act, 2017*. The AG commented that the GA structure that does not impact the Province's net debt or annual deficit is legislated accounting and not in accordance with Canadian Public Sector Accounting Standards.~~

With the Province providing guarantee agreements, financial support through credit facilities and these agreements to indemnify the IESO and OPG, this could weaken the case for the anticipated accounting treatment ~~that the Province is relying that underpins~~of the GA structure.

Commented [A13]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

[NTD: Should include a section that is more descriptive of the content of the proposed indemnity agreement too including exceptions for dishonesty, gross negligence and wilful misconduct, the issue re: due diligence as well as the waiver and the broad scope of the types of damages covered.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer relative to what the bills would otherwise have been without the OFHP.
- The proposed 25 per cent rate relief ~~measure~~ includes the ~~8 per cent~~ rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- Changes to the Global Adjustment ("GA") are ~~proposed to be~~ a component of the 25 per cent rate relief under the OFHP.

- The ~~G~~government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.
- ~~The implementation of the OFHP Act will involve the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities.~~

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"), and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the participation implementation of the Ontario Fair Hydro Plan ("ONFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

- The is Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.

RECOMMENDATION

- IESO and OPG have stated that the requirement of these indemnities are is required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("MOEENE") states that the likelihood of this indemnity being called upon is low and should it be called, that the fiscal exposure is unquantifiable at this time, should it be called.
- MOENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

ANALYSIS

Scope of liability from Indemnities

Commented [A1]: Is this expected, and when? Do we have a draft?

Commented [A2]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Where does it say that the likelihood of indemnity being called upon is low?

Commented [A3]: Is TBS okay with this?

Commented [A4]: Where does it say this?

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from ~~any~~ all claims, liabilities, costs, ~~or~~ losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals ~~arise to the corporation, him or her (respectively)~~ in relation ~~of~~to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHP~~Fair Hydro Plan~~ (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or ~~s~~a subsidiary). ~~as a result of their direct roles in carrying out the activities related to the OFHP Act~~.

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase~~sale~~ of the deferred assets under the Global Adjustment ("GA") structure ("regulatory assets").

M~~O~~ENE states that ~~both OPG and the IESO are anticipated to carry out~~the OFHP Act activities of both OPG and the IESO ~~that~~ would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, ~~T~~this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could ~~impa~~affect ~~the~~ OPG and IESO ~~directors~~'s willingness to undertake such activities, jeopardizing the successful implementation

Commented [A5]: It doesn't say "direct".

Commented [A6]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A7]: Something seems to be msing here

Commented [A8]: Fair to insert?

Commented [A9]: Would Energy change this to "historical" in its business case?

Commented [A10]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A11]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is ~~anticipated~~proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are ~~essentially~~ requesting to be indemnified for their activities that may be found to have not be~~en seen to be~~ conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected~~anticipated~~ to carry out activities under the OFHP ~~in the implementation of the OFHP Act~~ that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability. ~~(S~~Statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees"~~)~~. Since OPG is an OBCA corporation, directors and officers of OPG are subject to the standard set out in that Act ~~which is….~~[NTD: Should this reference the OBCA standard?]. The standard applicable to directors of IESO is set out in s. 12 of the Electricity Act, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. So the standard is similar for both OPG and IESO directors. The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation. Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

> *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under*

Commented [A12]: I think we need to include a subsection on existing indemnities, and when the proposed indemnities would not apply.

And lead this sub-section with the protections under statute, and why they may not be considered sufficient – claims on "good faith" as a question of fact to be considered by a court if a claim is brought forward.

And we should mention the waiver too.

Commented [A13]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Commented [A14]: Spell this out first time?

> *any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."*

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

> *"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."*

2. Potential for Fiscal Exposure of the OFHP Act

~~On May 24, 2017, the Ontario Auditor General ("AG") provided remarks to The Standing Committee on Justice Policy on the then proposed *Ontario Fair Hydro Plan Act, 2017*. The AG commented that the GA structure that does not impact the Province's net debt or annual deficit is legislated accounting and not in accordance with Canadian Public Sector Accounting Standards.~~

With the Province providing guarantee agreements, financial support through credit facilities and the proposesed agreements to indemnify the IESO and OPG, thei~~s could weaken the~~ case for the anticipated accounting treatment ~~that the Province is relying that underpins~~of the GA structure could be weakened.

Commented [A15]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

[NTD: Should include a section that is more descriptive of the content of the proposed indemnity agreement too including exceptions for dishonesty, gross negligence and wilful misconduct, the issue re: due diligence as well as the waiver and the broad scope of the types of damages covered.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer relative to what the bills would otherwise have been without the OFHP.
- The proposed 25 per cent rate relief ~~measure~~ includes the ~~8 per cent~~ rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

- Changes to the Global Adjustment ("GA") are ~~proposed to be~~ a component of the 25 per cent rate relief under the OFHP.
- The ~~G~~government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.
- ~~The implementation of the OFHP Act will involve the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities.~~

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

From:	Hume, Steen (ENERGY)
To:	Ronald Kwan
Cc:	Hilary Cox (ENE); Tim Christie (ENERGY)
Subject:	FW: OIC and IESO Financing
Date:	Wednesday, June 07, 2017 6:36:24 PM
Attachments:	1 - CIPA - OIC s22 - OFA_LRC Approval Form.docx 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE (002).docx

Thanks Ron. We'll take a look.

Has IESO provided comments on the attached materials.

Cheers, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-07-17 3:53 PM
To: Hume, Steen (ENERGY)
Subject: OIC and IESO Financing

Hi Steen,

As you'll recall, we are moving forward with OIC to expand the OFA's borrowing authority to facilitate the IESO's request for a credit facility from the OFA.

Attached is a draft approval form, which discusses this in reference to the FHP. Any comments you might have would be welcome.

As noted last week, the OIC itself is just on expanding the Province's ability to lend to the OFA (so that the OFA has the borrowing room to provide the facility), and the FHP is not mentioned in the OIC.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the authority of the Minister of Finance to lend to the OFA which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017* as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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, therefore, 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 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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.

- 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.

- 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*.

- It is proposed that the OIC authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 billion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

_____

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Ronald Kwan
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 5:07:19 PM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v6_Markup_RK.doc
4 - CIPA OIC s.22 May 2017 (v.2) - ENG and FRE_Markup.docx

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $3.5 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and June 30, 2053.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA of up to $x, under which the OFA has provided loans and credit facilities to …

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator (~~to the~~ ("IESO"). This ~~and~~ will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available ~~as it will be required~~ to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Commented [RK1]: Why this amount? Unless we can provide a reason beyond the FHP, I'd rather not go so high.

Commented [RK2]: Why this date? Tied to what?

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [RK3]: Include IESO in the list.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility~~will be lending~~ to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability~~.~~ to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 ~~T~~the proposed legislation, ~~however, does not require the~~ 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. ~~This short-term financing may also be required before the OPG SPV is operating and before it has its own financing in place to purchase the regulatory asset.~~

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

- ~~, therefore, i~~It is proposed that the OIC authorization be $3.5 billion [to ensure that there is sufficient ~~contingency~~borrowing authority in place for the OFA to meet the IESO and other requirements ~~once the implementation begins~~].

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, t~~T~~he Minister of Finance will subsequently ~~be required to~~ provide a Directive to the OFA to direct it to provide credit facilities ~~make loans~~ to the IESO in an amount not to exceed $~~3~~2.5 billion.
  - The OFA currently provides a credit facility to the IESO of $975 million.
  - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Commented [RK4]: $2bn, unless there is an identifiable other reason OFA needs more borrowing authority.

Commented [RK5]: Add in only if this is justifiable.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017*, which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation~~ing~~ of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed ~~R~~regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval~~ed~~ concurrently as it ~~is~~supports a crucial component of the successfully implementation~~ing~~ of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.

- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how ~~the OFA~~it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

Document Version/Version du document: document: MOF.2017.OFA[EFB]v.2

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Three Billion Five Hundred Million Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

Commented [RK1]: Why this amount? Unless we can provide a reason beyond the FHP, I'd rather not go so high.

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Three Billion Five Hundred Million Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by June 30, 2053;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de trois milliards cinq cent millions de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de trois milliards cinq cent millions de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 30 juin 2053;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Ronald Kwan
To: Nancy Kennedy (MOHLTC)
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 10:13:18 PM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v8.doc

---

Hi Nancy,

FYI on the OIC to enable the OFA credit facility requested by IESO.

Ron

From: Ronald Kwan
Sent: May-30-17 10:11 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are

aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator ("IESO"). This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

- It is proposed that the OIC authorization be $2.0 billion [to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Gavin He
To:	John Kim; Bruno Amara
Cc:	Ronald Kwan
Subject:	FW: OIC s22 CIPA - OFA-IESO
Date:	Thursday, June 08, 2017 1:10:45 PM
Attachments:	OICNA-13188_ID49171_LRC_Committee_Note - v2 - June 5 - need fair hydro.docx

Hi John/Bruno,

Please find attached the draft CBN note on our IESO OIC submission for your review and comment.

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 1:04 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Here is the draft note. There are number of placeholders to insert details from the other submission.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:45 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Thanks Jonathan!

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 12:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Checking in with CO on a number of things shortly, I will include this.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:41 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

In addition, do you know if CO is also doing a CBN note for our submission? If so, would they be able to share a draft with us as well?

Thanks,
Gavin He

From: Gavin He
Sent: Wednesday, June 07, 2017 3:27 PM
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

For now, could you please include Ron Kwan and John Kim for the briefing?

Also, do you have an idea when the meeting will be?

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Finance

DRAFT IESO's borrowing requirement for the Fair Hydro Plan

Policy Approval: May 31, 2017 (Fair Hydro Act)	TB/MBC: May (Fair Hydro)	LRC Date: June 27, 2017	Cabinet Date: June 27, 2017	Effective Date:

Summary of Proposal

This proposal does not contain any variances from current government direction.

Context for Decision:

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Fair Hydro Act, 2017*.

The IESO is responsible for financing short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

Why does Ontario need these changes? Why now?

The proposed OIC is needed to ensure borrowing authority for the OFA is available to provide the IESO necessary resources to implement the *Ontario Fair Hydro Plan Act, 2017*, which was passed on May 31, 2017.

The Ministry of Energy (Energy) is expected to propose regulations under the *Fair Hydro Plan Act* for Cabinet approval by the end of June 2017. The proposed OIC should be considered for approval concurrently as it supports a crucial component for the successfully implementation of the Fair Hydro Plan.

How will this proposal impact Ontario?

This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act.*

The OFA currently provides a credit facility to the IESO of $975M. The IESO has requested that the existing credit facility be reduced to $475M, and a new credit facility be provided of $2B, for a total amount of $2.475B.

[place holder for Fair Hydro cross reference]

What is the expected cost to government?

With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2B to the OFA. Loans advanced will result in increased borrowing in the debt markets by the Province. Loans are expected to be repaid and, therefore, no fiscal impact is expected.

What are the key steps to deliver this proposal?

If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

How will the changes be communicated?

MOF is not proposing any communications in relation to the proposed OIC.

[place holder for Fair Hydro?]

Cabinet Office Analysis

Introduction:

Under other OICs, the Minister of Finance is authorized to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

Linkages:

The proposed OIC is required is to ensure the timely implementation and support for the success of the Fair Hydro Plan.

[place holder for Fair Hydro description]

Delivery:

If approved, the Minister of Finance would have authorization to provide a loan to the OFA with a directive on how the loan can be used.

Stakeholder response:

[place holder for Fair Hydro]

Risks:

Not being able to implement Fair Hydro.
[place holder for Fair Hydro]

From:	Ronald Kwan
To:	Jonathan Tekle (CAB)
Cc:	Gavin He; Deena Padamadan
Subject:	FW: OIC s22 CIPA - OFA-IESO
Date:	Saturday, June 10, 2017 3:02:58 PM
Attachments:	OICNA-13188_ID49171_LRC_Committee_Note - v2 - June 5 - need fair hydro_Markup2.docx

Hi Jonathan,

Some suggestions on the attached.

Thanks,
Ron

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 1:04 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Here is the draft note. There are number of placeholders to insert details from the other submission.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:45 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Thanks Jonathan!

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 12:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Checking in with CO on a number of things shortly, I will include this.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:41 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

In addition, do you know if CO is also doing a CBN note for our submission? If so, would they be able to share a draft with us as well?

Thanks,
Gavin He

From: Gavin He
Sent: Wednesday, June 07, 2017 3:27 PM
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

For now, could you please include Ron Kwan and John Kim for the briefing?

Also, do you have an idea when the meeting will be?

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Finance

DRAFT IESO's borrowing requirement for the Fair Hydro Plan

Policy Approval: May 31, 2017 (Fair Hydro Act)	TB/MBC: May (Fair Hydro)	LRC Date: June 27, 2017	Cabinet Date: June 27, 2017	Effective Date:

Summary of Proposal

This proposal does not contain any variances from current government direction.

Context for Decision:

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2.0B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

~~The IESO is responsible for financing short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.~~

The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

Why does Ontario need these changes? Why now?

The proposed OIC is needed to ensure borrowing authority for the OFA is available to provide the IESO necessary resources to implement the *Ontario Fair Hydro Plan Act, 2017*, which was passed on May 31, 2017.

The IESO is anticipated to have ~~to~~ financing requirements for short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- There is expected to be initial and potential 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.]

The Ministry of Energy (Energy) is expected to propose regulations under the *Ontario Fair Hydro Plan Act, 2017* for Cabinet approval by the end of June 2017. The proposed OIC should be considered for approval concurrently as it supports a crucial component for the successful~~ly~~ implementation of the *Ontario Fair Hydro Plan Act, 2017*.

How will this proposal impact Ontario?

This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

The OFA currently provides a credit facility to the IESO of $975M. The IESO has requested that the existing credit facility be reduced to $475M, and a new credit facility be provided of $2.0B, for a total amount of $2.475B.

[place holder for Fair Hydro cross reference]

What is the expected cost to government?

With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0B to the OFA. Loans advanced will result in increased borrowing in the debt markets by the Province, with associated interest costs. Loans to the IESO or other third parties are required under the OIC to bear offsetting interest, and are expected to be repaid and, therefore, no fiscal impact is expected.

What are the key steps to deliver this proposal?

If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

How will the changes be communicated?

MOF is not proposing any communications in relation to the proposed OIC.

[place holder for Fair Hydro?]

Cabinet Office Analysis

Introduction:

Under other OICs, the Minister of Finance is authorized to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

Linkages:

The proposed OIC is required is to ensure the timely implementation and support for the success of the Fair Hydro Plan.

[place holder for Fair Hydro description]

Delivery:

If approved, the Minister of Finance would have authorization to provide a loan to the OFA with a directive on how the loan can be used.

Stakeholder response:

[place holder for Fair Hydro]

Risks:

Not being able to implement Fair Hydro.
[place holder for Fair Hydro]

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED
Date:	Tuesday, June 27, 2017 9:57:54 AM
Attachments:	s28 Minister"s Memo - OPG and IESO Indemnities - FINAL.DOCX 20170626-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx 20170626-IESO Indemnity Agreement - FINAL.DOCX 20170626--s.28 business case - IESO and OPG Indemnity OFHP -FINAL.DOCX 20170626-OPG Indemnity Agreement - FINAL.DOCX

Hi Ron

Sorry, here is latest. There was a small change yesterday in indemnity coverage, where OPG also wanted covered director, officers, employees of a financing entity (but not the financing entity itself), if they are also employees of the corporation or its subsidiaries.

There is also still some back and forth this morning between MoF Legal and Energy legal to clarify some things.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 5:55 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Bruno/Toby,

FYI – attached is the finalized package for the OPG/IESO indemnities s.28. We've sent this up to our DMO (flagging that OPG Agreement is still subject to MOF/OFA confirmation re: revised wording at section 2).

The Memo, CL table, and business case incorporate all comments from OFA.

I'll let you know once this package is signed by our Minister and ready to send over to MOF.

Many thanks again for your ongoing assistance on this.

Thank you,

Harkamal

Harkamal Multani
Counsel

Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Ministry of
Office of the Minister

Ministère de
Bureau du ministre

Ontario

June XX, 2017

MEMORANDUM TO: Charles Sousa
Minister of Finance

FROM: Glenn Thibeault
Minister of Energy

RE: Request for section 28 approval of indemnities to the IESO, OPG, OPG's subsidiaries, and respective directors, officers, and employees in relation to the Ontario Fair Hydro Plan

---

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") the forms of indemnity for the IESO, its directors, officers, and employees; and OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*")) and their respective directors, officers, and employees (collectively the "Protected Persons"). Ministry of Finance and Ministry of Energy staff have worked together to review OPG's and IESO's indemnity requests and finalize materials.

OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their activities in carrying out the implementation of the Plan. OPG has also requested this form of indemnity for its subsidiaries (other than any financing entities as defined under the Act) ("Subsidiaries") and respective directors, officers and employees. The Ministry of Energy has committed to providing these indemnities. The Minister of Energy ("Minister") has been briefed and supports this request for approval.

The *Act* enables the implementation of the Ontario Fair Hydro Plan (the "Plan"). Under the Plan, the government has proposed to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the Plan. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to

provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the Plan.

The Plan is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG, OPG's Subsidiaries, and IESO in carrying out their roles in implementing the Plan will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations and their directors, officers, and employees may be subject to increased liability specifically due to their roles with the Plan. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The indemnities will provide OPG, OPG's Subsidiaries, the IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the Plan.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified. Should the payment be required, the Ministry will return to TB/MBC for an increase in its allocation.

Approval of these indemnities is requested by June 30, 2017. Failure to obtain approval could jeopardize the implementation of the Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

Sincerely,

Glenn Thibeault
Minister

Enclosures

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation (“OPG”). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries (not including any financing entities as defined under the Act) and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by OPG or its subsidiaries (not include the financing entities as defned under the Act), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity’s debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers, members of a committee or panel established by the directors, and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the Ontario Fair Hydro Plan such as the creation of a regulatory asset in relation to the GA financing component of the Ontario Fair Hydro Plan, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers	Providing this indemnity will facilitate IESO in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by the IESO, its directors (including a member of a committee or panel established by the directors), officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors (inlucidng a member of a committee or panel established by the directors), officers and employees; and medium with respect to the corporation itself.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the Act, its respective regulation, and/or any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act). The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

EXECUTION VERSION

INDEMNITY

THIS INDEMNITY effective as of this 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan");

AND WHEREAS the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

    (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

Administration Act (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective activities in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (not including any financing entities as defined in the *Act*) ("Subsidiaries") and their respective directors, officers and employees.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to OPG and the IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed (June 1, 2017).

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to

investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO,

its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith".

Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under

the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

(b) Description of Risk and any Risk Mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund;

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities;

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in

which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variances in the Indemnities includes a waiver provision whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the Protected Persons' activities in the implementation, or otherwise relating to the ONFHP (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity as OPG's directors/officers/employees, as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity).

However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c) in the IESO Indemnity and section 3(c) in the OPG Indemnity) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 8 in the IESO Indemnity and section 9 in the OPG Indemnity), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG, OPG's Subsidiaries and IESO's (including their respective directors, officers and employees') willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's Subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

EXECUTION VERSION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first written above.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

From:	John Kim
To:	Tobias P. Whitfield (MOF)
Cc:	Malle Hanslep (MOF); Ronald Kwan
Subject:	FW: OPG/IESO Indemnities - Section 28 Approvals
Date:	Monday, June 05, 2017 4:12:09 PM
Attachments:	OPGIESO Indemnities - Section 28 Approvals.msg FW OPGIESO Indemnities - Section 28 Approvals.msg s28 BN - OPG IESO Indemnities v2.doc

Hi Toby,

As requested.

John

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Tuesday, May 23, 2017 9:58 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Felix Fung (MOF) <Felix.Fung@ontario.ca>; Paul Kaufman (MOHLTC) <Paul.Kaufman@ontario.ca>
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Ron,

Energy is preparing a s28 FAA approval request related to OPG and IESO requests for indemnities related to their roles in implementing Ontario Fair Hydro Plan.

I've attached a draft note that is based on the draft materials provided in the second email. The third email indicates a further request to broaden coverage of indemnities that Energy is working on.

Since this is related to global adjustment refinancing, including market offerings, the OFA should be providing advice, but not sure exactly who would be providing that advice regarding a s28 request.

I'm also recommending that should there be a decision to provide the indemnities, it be done under Section 22 of the FAA.

James

From: Harkamal Multani (MOF) []
To: Paul Kaufman (MOHLTC) [Paul.Kaufman@ontario.ca]
CC: Felix Fung (MOF) [Felix.Fung@ontario.ca]; James Strang (MOF) [James.Strang@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]; Tim Christie (ENERGY) [Tim.Christie@ontario.ca]
Subject: OPG/IESO Indemnities - Section 28 Approvals
Date: Tuesday, May 16, 2017 15:11:55
Attachment 1: 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINAL.DOCX
Attachment 2: 20170515-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx
Attachment 3: 20170515-IESO - Indemnity-DRAFT-cln.docx
Attachment 4: 20170515-Ontario Power Generation - Indemnity-DRAFT-cln.docx
Attachment 5: 20170515-OPG IESO ONFHP Indemnities - DM Memo -DRAFT-cln.docx

---

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP

The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.

Draft

As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM1]: OPG/IESO input required on this regarding the specific risks they are concerned about.

The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate

Draft

mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or

default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against OPG or IESO's directors, officers, and employees as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity

Draft

under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited specifically to claims arising in relation to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the director.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to claims:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that the protected person is actually so indemnified or covered under such policy or fund; or

(b) for which other indemnities are already provided to the protected person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

Draft

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

The Indemnities would not apply with respect to claims for which coverage is provided and paid under insurance, or which are covered by another indemnity already provided, for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities, or for claims arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

APPENDIX "B"

Contingent Liabilities

Request for Approval Pursuant to section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, its directors, officers and employees (the "Protected Persons") against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Plan.	The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, directors, officers and employees against any claims that may arise in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purpose entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnities are limited specifically to claims arising in relation to OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed. The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of these entities or persons.	Could jeopordize the successful implementation of the ONFHP.

DRAFT

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Plan.	The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity.	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purpose entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnities are limited specifically to claims arising in relation to IESO's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed. The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the IESO or its respective directors, officers or employees or is brought about by dishonesty, gross negligence or willful misconduct of these entities or persons. Statutory immunity is also provided to IESO's directors, officers and employees under section 19(1) of the Electricity Act, 1998. However, this statutory immunity does not eliminate risk completely.	Could jeopordize the successful implementation of the ONFHP.

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, its directors, officers and employees may face risk of liability which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation of the Act.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, and employees (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"),

2. This indemnity does not apply with respect to Claims:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that a Protected Person is actually so indemnified or covered under such policy or fund; or

DRAFT

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:

(a) immediately and without delay deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims(s) that is in the possession or under the control of the Protected Person;
(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
(d) promptly take all necessary steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), the Protected Person shall co-operate fully with the Province in connection with the same, and the Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's

DRAFT

counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
)
in the presence of)
)
_____)
Name:)

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

AND WHEREAS the Corporation, its directors, officers and employees may face risk of liability which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation of the Act.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, and employees (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"),

2. This indemnity does not apply with respect to Claims:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that a Protected Person is actually so indemnified or covered under such policy or fund; or

DRAFT

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:

(a) immediately and without delay deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims(s) that is in the possession or under the control of the Protected Person;
(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
(d) promptly take all necessary steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), the Protected Person shall co-operate fully with the Province in connection with the same, and the Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's

DRAFT

counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of)
)
_____)
Name:)

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

[INSERT DATE]

MEMORANDUM TO: Helen Angus
Deputy Minister, Treasury Board Secretariat

FROM: Serge Imbrogno
Deputy Minister

RE: Request for section 28 approval of indemnities to Ontario Power Generation Inc. ("OPG"), Independent Electricity System Operator ("IESO) and its respective directors, officers and employees related to their role in carrying out the implementation of the proposed *Ontario Fair Hydro Act*, (the "Act"), if passed.

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") to provide indemnities to OPG, the IESO and their respective directors, officers and employees in relation to their roles in carrying out the implementation of the Act, if passed.

The indemnity relates to the roles these entities and their respective directors, officers and employees will play in the implementation of the Act, which was introducted in the legislature on May 11, 2017, if passed and enacted as legislation.The Minister of Energy (Minister) has been briefed and supports this request for approval.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified at this time.

Approval of these indemnities is requested by June 1, 2017. Failure to obtain approval could jeopardize the implementation of the Act and Ontario's Fair Hydro Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

DRAFT

Sincerely,

Serge Imbrogno
Deputy Minister

Enclosures

DRAFT

From: Paul Kaufman (MOHLTC) []
To: James Strang (MOF) [James.Strang@ontario.ca]
CC: Felix Fung (MOF) [Felix.Fung@ontario.ca]
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals
Date: Thursday, May 18, 2017 16:55:16
Attachment 1: 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK.docx

---

James, FYI I got a call from energy legal on this – apparently OPG has asked for a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation). Energy isn't sure if they support this change in scope, but they are considering it and might send us revised materials. I told them that the argument that OPG and IESO are being asked to take on new lines of work that they aren't familiar with might not be as strong of a justification in connection with subsidiaries that are established for the express purpose of issuing securities, so that might require a discussion or at least an enhanced business case.

It also sounds like they are anxious to know if this will go to MOF instead of us (I told them direction is still pending) and for confirmation that we can get them an approval by June 1 if it stays with us (I told them that would depend on the availability of senior decision-makers and their willingness to sign off on this, but that it wouldn't fail for lack of effort at the staff level on your end or mine). I tried to reassure them that these requests can move quickly when they need to.

I didn't mention the potential section 22 option since we haven't talked to MOF about it.

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this

email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)

Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP

The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.

Draft

As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM2]: OPG/IESO input required on this regarding the specific risks they are concerned about.

The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate

Draft

mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or

default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against OPG or IESO's directors, officers, and employees as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity

Draft

under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited specifically to claims arising in relation to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the director.

Commented [PMK3]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [PMK4]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to claims:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that the protected person is actually so indemnified or covered under such policy or fund; or

(b) for which other indemnities are already provided to the protected person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

Draft

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

The Indemnities would not apply with respect to claims for which coverage is provided and paid under insurance, or which are covered by another indemnity already provided, for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities, or for claims arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

Indemnities to OPG/IESO – Implementing Proposed Ontario Fair Hydro Act (if passed)

ISSUE

OPG and IESO are asking for indemnities to the IESO, OPG (the entities) and their respective directors, officers and employees in order to allow them to carry out their roles in implementing the Ontario Fair Hydro Plan (OFHP).

The Ministry indicates both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").

May 18 update from TBS Legal – Energy decision pending on revised ask from OPG/IESO - a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation).

MOF RECOMMENDATION

Based on materials provided by ENERGY, TBS staff are deferring judgment based on the information provided in the transmittal letter from the DM, Energy and the supporting business case provided.

BACKGROUND

Blurb on OFHP….

The Ministry indicates for:

- OPG – GA refinancing would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity) and that associated risks are beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- IESO – proposed legislation would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the

OFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the OFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO.

FINANCIAL IMPLICATIONS

The Ministry's submission there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The Ministry indicates the risk to the Province of giving the Indemnities is undeterminable at this time (cannot be quantified), but that the exposure will be linked to the OPG special purpose entity's debt offerings" of accumulated deferred Global Adjustment costs.

From the latest TB/MBC submission, in 2017-18 deferred global adjustment is forecasted to be about $2.5B, of which 51% is to be financed directly in capital markets, and $49%, about $1.1B, in an equity injection to OPG from the Province, with additional OPG shares being given to the province as OPG's sole shareholder.

With the planned approach capping rate increases at 2% till 2020, total accumulated debt to be refinanced reaches a peak of $24.2B by 2027, financed by on-going Provincial equity injections and debt offerings into the market with subsequent collection of deferred amounts from ratepayers out to 2047 (See Appendix A). The Ministry indicates tentative timing for debt offerings to commence is Fall 2017.

The nature of the indemnities suggests ….. for example negative credit rating impact arising from OFHP.

Although the Minsitry indicates the risk associatied with providing the indemnities are undeterminable, the amount of accumulated debt is quite significant. This raises a question about whether the Ministry has sufficient appropriations in place for 2017-18 to enter into the agreement to provide the indemnities. Section xxx.x. of the FAA indicates

Currently there are no explicit appropriations for GA refinancing other than the $1.1B investment asset for the projected OPG equity injection requirements in 2017-18. There is about $500M in Transfer payments related for the Electricity Social Programs, having moved to being funded from voted appropriations starting in 2017-18.

An alternate approach may be to have, under Section 22.1 of the FAA, the LGIC authorize the Minister of Finance to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person. Should claim be made, a payment

of any amount could be made under Section 12 of the FAA, paid by the Minister of Finance from the Consolidated Revenue Fund.

Section 11

BUSINESS CASE

Why is the section 28 approval needed?

The Province is being asked to agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

How has potential Crown liability been limited by the proposed indemnity?

The indemnities would not apply with respect to claims:

- Where coverage is provided under an insurance policy or claims fund to the extent a protected person is covered by a policy or fund.
- Where other indemnities already exist for protected persons.
- Brought about or contributed to by a protected person's dishonesty, gross negligence or willful misconduct
- Arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty

Measures to mitigate risk with securities:

-
- OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds.
    - Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.
    - OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.

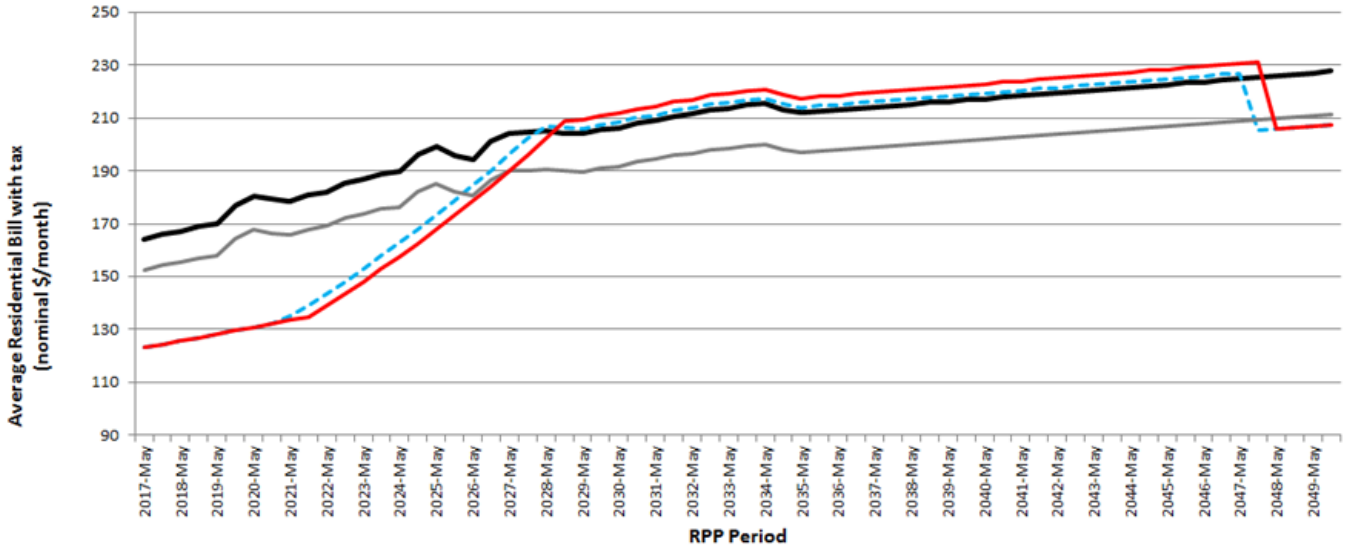
What are the possible consequences if section 28 approval is not given?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

If the indemnities are not provided, this could impact OPG and IESO directors' willingness to undertake activities that would fall outside of the scope of typical business activities and mandate, due to the risk of liability, and consequently jeopardizing the successful implementation of the planned approach to GA refinancing component of the ONFHP.

James Strang
General Government, Planning and Resources / PEMD
May 19, 2017

Appendix A: GA Smooting for RPP – Eligible Only (From May 9 TB/MBC Briefing Note & LRC package May 10, 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

From:	Ronald Kwan
To:	John Kim
Subject:	FW: OPG/IESO Indemnities - Section 28 Approvals
Date:	Wednesday, May 24, 2017 3:35:23 PM
Attachments:	OPG Indemnity - Torys, OPG Comments (May 17, 2017).docx Blackline OPG Indemnity.pdf 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK....docx 20170523-IESO Indemnity Agreement Confidential track changes -ENERGY LSB....docx

---

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: May-24-17 15:25
To: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

FYI,

Indemnity materials, as discussed.

Toby

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

From: Kaufman, Paul (TBS)
Sent: May 24, 2017 11:25 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi again – the TBS DM has agreed with the staff recommendation here that it would be best if this request went to the Minister of Finance rather than the President of TB, since it primarily covers financing activities and since it fits in with/overlaps with some of the other activities that MOF and the OFA are more directly involved in.

I know this is coming somewhat late so wanted to check in with you both to make sure you're comfortable with that approach before I suggest to Harkamal that she and her clients direct their request to MOF. Happy to stay involved or help out, or discuss if you have concerns.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi – as discussed with Malle just now, attached are the latest materials that we received through energy legal, and a note to the TBS client that summarizes a discussion I had this morning with Harkamal about this.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:17 AM
To: Strang, James (TBS)
Cc: Fung, Felix (TBS); Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

James, I spoke to counsel at Energy about the proposed revisions to the boilerplate indemnity agreements. I told her that some minor clarifications to the existing text likely wouldn't raise concerns here, but that even minor changes might add some time to the approvals process on our end.

The changes that OPG is proposing are more substantive in nature and in a number of cases seem like they would result in the province assuming more than a reasonable amount of risk. Energy legal agrees with this and it sounds like energy is going to push back pretty hard with OPG. They also understand that we'll need them to provide a rationale for any substantive deviations from the original draft agreements.

It sounds like Energy is hoping to finalize the agreements today or tomorrow and proceed with approvals on their end. They hope to get us a minister-signed request by early next week, but will share the materials that they send up the line in the interim.

I also flagged the appropriations issue and they are going to consider it further. I didn't note the section 22 option because, as discussed, it's not clear if MOF would be comfortable with it. Our branch is going to discuss this file with MOF legal today, and we understand they are also talking to the OFA today.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-23-17 7:02 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Ho, Larissa (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks for this Paul.

We received comments back from OPG and IESO on the Business case as well as on the indemnity agreements. I've attached the updated business case that includes changes to reflect your comments as well as OPG and IESO's comments. Please let us know if you have any further concerns.

On the indemnity agreements, we are working through the proposed changes that both IESO and OPG have proposed to them. The IESO indemnity agreement changes that the IESO has proposed appear to be okay, and I've just made some further edits/comments that I am in the process of clarifying with IESO. Could you please take a look at the attached and let us know if there are any concerns from your end on the changes?

The OPG changes to its indemnity agreement are much more substantial and we are working through them still, however, I am wondering whether you can take a look and let us know if you or your policy clients have any significant concerns as well in the interests of time. The changes seem to be more for clarity, but given that they differ from the standard template language just wanted to make sure TBS is comfortable. Both clean and tracked versions of the OPG indemnity agreement are attached.

If it is easier and would be quicker to have a call to discuss, I would be happy to set something up.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to

be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman
Counsel

Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:

    (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or

    (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

    (d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:

    (a) as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of any Claim;

    (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

DRAFT

(c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

DRAFT

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DRAFT

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")~~,~~

OF THE SECOND PART

WHEREAS the Corporation ~~is~~and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to ~~the implementation of~~(i) the *Ontario Fair Hydro Plan Act* ~~(the "Act~~, *2017* (the "Act"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "Fair Hydro Plan").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation~~due to or as a result of the ~~Act.~~Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. ~~to~~To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of ~~its~~their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the Protected Persons arising specifically~~any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss

of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected ~~Persons' direct role in carrying out~~Person's activities ~~related to~~, acts and/or omissions in the implementation of, or otherwise relating to, the ~~Act (collectively, "Claims" and individually, a "Claim"),~~ Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to ~~Claims~~Losses of a Protected Person:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~but only to the extent that a Protected Person is actually ~~so indemnified or covered~~paid under such insurance policy ~~or fund~~for those Losses; or

(b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was

lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any ~~notice of a Claim that the Protected Person receives~~Losses, the Protected Person ~~must~~shall:

   (a) ~~immediately and without delay~~as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~the~~any Claim~~(s)~~;

   (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

   (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~(s)~~; and

   (d) promptly take all ~~necessary~~reasonable steps to obtain indemnification ~~or coverage~~ to the fullest extent possible under insurance policies ~~or claims funds~~, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

   A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity~~,~~ unless and only to the extent that~~, as a result of~~ such failure~~, the party which was entitled to receive~~ to provide such prompt notice ~~was~~has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim~~(s)~~ and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim~~(s)~~ without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim~~(s)~~, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of

a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. ~~For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~ The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the

foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. ~~6.~~ This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. ~~7.~~ The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **ONTARIO**
POWER GENERATION INC.
~~in the presence of~~)

)

_____) By: _____
~~Name:~~)

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

By:_____

Glenn Thibeault
Minister of Energy

Document comparison by Workshare Compare on May-18-17 3:01:44 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23514933/1
Description	#23514933v1<TorysAtWork> - OPG Indemnity - Torys, OPG Comments (May 17, 2017)
Document 2 ID	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Description	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	124

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On May 11, 2017 t~~T~~he Government introduced Bill 132, which, if passed would ~~is proposing to enact introduce~~ legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), agents (in the case of IESO), directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

Commented [HM2]: I've updated

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

~~***OPG – Role in Implementation of ONFHP***~~

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

~~The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.~~

~~As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.~~

Formatted: Space After: 6 pt

Formatted: Right: 0"

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Draft

~~Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.~~

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market.~~.~~ IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM3]: OPG/IESO input required on this regarding the specific risks they are concerned about.

~~The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.~~

~~Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.~~

~~To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.~~

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees, as well as IESO's agents is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below). Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG), agents (in the case of the IESO), directors, officers and employees, these Indemnities

Draft

would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

Formatted: Normal, None

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action

or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against ~~OPG or IESO's directors, officers, and employees~~the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited ~~specifically~~ to claims arising in relation

Draft

to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the ~~director~~protected persons.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to ~~c~~lossesl~~aim~~s:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~ to the extent that the protected person is actually s~~o indemnified or covered~~paid under such policy ~~or fund~~for those losses; or

(b) for which other indemnities are already provided to the protected person but only to the extent that the Protected Person is actually so indemnified for those losses by such indemnities;

(c) ~~brought about or contributed to by~~is the result of the~~a~~ Protected Person's dishonesty, gross negligence or willful misconduct, but only such ~~if a judgment or other final adjudication adverse to the Protected Person establishes that there was~~ dishonesty, gross negligence or willful misconduct on the Protected Person's part ~~which was material to the cause of action as adjudicated~~has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~;~~ or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [PMK4]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [HM5]: Gross negligence is used to be consistent with the OBCA requirement.

Commented [PMK6]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

Commented [HM7]: I've changed the reference accordingly.

Draft

OPG's indemnity, with respect to clause (c) above, further provides that the Province agrees that it does not intend that any failure by a Protected Person to conduct a reasonable investigation with respect to advising the OPG about misrepresentations in any prospectus, registration statement or other securities/offering document, shall constitute "gross negligence" or "wilful misconduct" for this purposes of clause (c) above and does not disentitle the protected person from the Indemnity. This language has been included at the request of OPG in order to provide additional clarity to limit the OPG's liability with respect to carrying out any investigation of securities/offering documents.

The Indemnities would not apply with respect to ~~claims~~ losses for which coverage is provided and paid under insurance, or which are covered by another indemnity~~-~~under which the protected person is already so indemnified~~already provided~~;~~,~~ for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities;~~,~~ or for claims arising from circumstances where the ~~corporation, director, officer or employee~~protected persons did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face ~~risk~~risks of liability which ~~extends~~extend beyond the typical operations risk of the Corporation ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person arising ~~specifically~~ as a result of, or in connection with, the ~~Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**

~~2. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a~~ payment has been made thereunder to such Protected Person~~ is actually so indemnified or covered under such policy;~~ or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the~~ payment has been made to such Protected Person ~~is actually so indemnified by~~under such indemnities; or

(c) ~~brought about or contributed to by a~~is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.

(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder~~ in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~(s)~~;

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person;

~~(h)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~each Protected Person shall co-operate fully with the Province in connection with the same, and ~~the~~each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Formatted: Indent: Left: 1.5"

Formatted: Font color: Green

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of	**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
_____ Name:	By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From:	Whitfield, Tobias P. (MOF)
To:	Mike Manning; Ken Kandeepan; Opal Kandelas
Cc:	Malle Hanslep (MOF); Ronald Kwan
Subject:	FW: OPG/IESO Indemnities - Section 28 Approvals
Date:	Wednesday, May 24, 2017 3:26:17 PM
Attachments:	OPG Indemnity - Torys, OPG Comments (May 17, 2017).docx Blackline OPG Indemnity.pdf 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK....docx 20170523-IESO Indemnity Agreement Confidential track changes -ENERGY LSB....docx

FYI,

Indemnity materials, as discussed.

Toby

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

From: Kaufman, Paul (TBS)
Sent: May 24, 2017 11:25 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi again – the TBS DM has agreed with the staff recommendation here that it would be best if this request went to the Minister of Finance rather than the President of TB, since it primarily covers financing activities and since it fits in with/overlaps with some of the other activities that MOF and the OFA are more directly involved in.

I know this is coming somewhat late so wanted to check in with you both to make sure you're comfortable with that approach before I suggest to Harkamal that she and her clients direct their request to MOF. Happy to stay involved or help out, or discuss if you have concerns.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi – as discussed with Malle just now, attached are the latest materials that we received through energy legal, and a note to the TBS client that summarizes a discussion I had this morning with Harkamal about this.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:17 AM
To: Strang, James (TBS)
Cc: Fung, Felix (TBS); Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

James, I spoke to counsel at Energy about the proposed revisions to the boilerplate indemnity agreements. I told her that some minor clarifications to the existing text likely wouldn't raise concerns here, but that even minor changes might add some time to the approvals process on our end.

The changes that OPG is proposing are more substantive in nature and in a number of cases seem like they would result in the province assuming more than a reasonable amount of risk. Energy legal agrees with this and it sounds like energy is going to push back pretty hard with OPG. They also understand that we'll need them to provide a rationale for any substantive deviations from the original draft agreements.

It sounds like Energy is hoping to finalize the agreements today or tomorrow and proceed with approvals on their end. They hope to get us a minister-signed request by early next week, but will share the materials that they send up the line in the interim.

I also flagged the appropriations issue and they are going to consider it further. I didn't note the section 22 option because, as discussed, it's not clear if MOF would be comfortable with it. Our branch is going to discuss this file with MOF legal today, and we understand they are also talking to the OFA today.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-23-17 7:02 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Ho, Larissa (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks for this Paul.

We received comments back from OPG and IESO on the Business case as well as on the indemnity agreements. I've attached the updated business case that includes changes to reflect your comments as well as OPG and IESO's comments. Please let us know if you have any further concerns.

On the indemnity agreements, we are working through the proposed changes that both IESO and OPG have proposed to them. The IESO indemnity agreement changes that the IESO has proposed appear to be okay, and I've just made some further edits/comments that I am in the process of clarifying with IESO. Could you please take a look at the attached and let us know if there are any concerns from your end on the changes?

The OPG changes to its indemnity agreement are much more substantial and we are working through them still, however, I am wondering whether you can take a look and let us know if you or your policy clients have any significant concerns as well in the interests of time. The changes seem to be more for clarity, but given that they differ from the standard template language just wanted to make sure TBS is comfortable. Both clean and tracked versions of the OPG indemnity agreement are attached.

If it is easier and would be quicker to have a call to discuss, I would be happy to set something up.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)

Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:

    (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or

    (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

    (d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:

    (a) as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of any Claim;

    (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

DRAFT

(c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

DRAFT

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DRAFT

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")~~,~~

OF THE SECOND PART

WHEREAS the Corporation ~~is~~and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to ~~the implementation of~~(i) the *Ontario Fair Hydro Plan Act* ~~(the "Act~~, *2017* (the "Act"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "Fair Hydro Plan").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation~~due to or as a result of the ~~Act.~~Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. ~~to~~To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of ~~its~~their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the Protected Persons arising specifically~~any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss

of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected ~~Persons' direct role in carrying out~~Person's activities ~~related to~~, acts and/or omissions in the implementation of, or otherwise relating to, the ~~Act (collectively, "Claims" and individually, a "Claim"),~~ Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to ~~Claims~~Losses of a Protected Person:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~but only to the extent that a Protected Person is actually ~~so indemnified or covered~~paid under such insurance policy ~~or fund~~for those Losses; or

(b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was

lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any ~~notice of a Claim that the Protected Person receives~~Losses, the Protected Person ~~must~~shall:

   (a) ~~immediately and without delay~~as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~the~~any Claim~~(s)~~;

   (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

   (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~(s)~~; and

   (d) promptly take all ~~necessary~~reasonable steps to obtain indemnification ~~or coverage~~ to the fullest extent possible under insurance policies ~~or claims funds~~, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

   A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity~~,~~ unless and only to the extent that~~, as a result of~~ such failure~~, the party which was entitled to receive~~ to provide such prompt notice ~~was~~has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim~~(s)~~ and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim~~(s)~~ without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim~~(s)~~, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of

a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. ~~For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~ The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the

foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. ~~6.~~ This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. ~~7.~~ The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **ONTARIO**
POWER GENERATION INC.
~~in the presence of~~)

)

_____) By: _____
~~Name:~~)

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

By:_____

Glenn Thibeault
Minister of Energy

Document comparison by Workshare Compare on May-18-17 3:01:44 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23514933/1
Description	#23514933v1<TorysAtWork> - OPG Indemnity - Torys, OPG Comments (May 17, 2017)
Document 2 ID	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Description	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	124

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On May 11, 2017 t~~T~~he Government introduced Bill 132, which, if passed would ~~is proposing to enact introduce~~ legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), agents (in the case of IESO), directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

Commented [HM2]: I've updated

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

~~***OPG – Role in Implementation of ONFHP***~~

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

~~The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.~~

~~As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.~~

Formatted: Space After: 6 pt

Formatted: Right: 0"

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Draft

~~Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.~~

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market.~~.~~ IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM3]: OPG/IESO input required on this regarding the specific risks they are concerned about.

~~The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.~~

~~Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.~~

~~To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.~~

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees, as well as IESO's agents is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below). Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG), agents (in the case of the IESO), directors, officers and employees, these Indemnities

Draft

would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

Formatted: Normal, None

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action

or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against ~~OPG or IESO's directors, officers, and employees~~the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited ~~specifically~~ to claims arising in relation

Draft

to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the ~~director~~protected persons.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to ~~c~~lossesl~~aim~~s:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~ to the extent that the protected person is actually s~~o indemnified or covered~~paid under such policy ~~or fund~~for those losses; or

(b) for which other indemnities are already provided to the protected person but only to the extent that the Protected Person is actually so indemnified for those losses by such indemnities;

(c) ~~brought about or contributed to by~~is the result of the~~a~~ Protected Person's dishonesty, gross negligence or willful misconduct, but only such ~~if a judgment or other final adjudication adverse to the Protected Person establishes that there was~~ dishonesty, gross negligence or willful misconduct on the Protected Person's part ~~which was material to the cause of action as adjudicated~~has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~;~~ or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [PMK4]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [HM5]: Gross negligence is used to be consistent with the OBCA requirement.

Commented [PMK6]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

Commented [HM7]: I've changed the reference accordingly.

Draft

OPG's indemnity, with respect to clause (c) above, further provides that the Province agrees that it does not intend that any failure by a Protected Person to conduct a reasonable investigation with respect to advising the OPG about misrepresentations in any prospectus, registration statement or other securities/offering document, shall constitute "gross negligence" or "wilful misconduct" for this purposes of clause (c) above and does not disentitle the protected person from the Indemnity. This language has been included at the request of OPG in order to provide additional clarity to limit the OPG's liability with respect to carrying out any investigation of securities/offering documents.

The Indemnities would not apply with respect to ~~claims~~ losses for which coverage is provided and paid under insurance, or which are covered by another indemnity~~-~~under which the protected person is already so indemnified~~already provided~~;~~,~~ for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities;~~,~~ or for claims arising from circumstances where the ~~corporation, director, officer or employee~~protected persons did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face ~~risk~~risks of liability which ~~extends~~extend beyond the typical operations risk of the Corporation ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person arising ~~specifically~~ as a result of, or in connection with, the ~~Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**

~~2. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a~~ payment has been made thereunder to such Protected Person~~ is actually so indemnified or covered under such policy;~~ or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the~~ payment has been made to such Protected Person ~~is actually so indemnified by~~under such indemnities; or

(c) ~~brought about or contributed to by a~~is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.

(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder~~ in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~(s)~~;

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person;

~~(h)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~each Protected Person shall co-operate fully with the Province in connection with the same, and ~~the~~each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Formatted: Indent: Left: 1.5"

Formatted: Font color: Green

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of	**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
_____ Name:	By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From:	Strang, James (TBS)
To:	Ronald Kwan
Subject:	FW: OPG/IESO Indemnities - Section 28 Approvals
Date:	Wednesday, May 24, 2017 3:17:46 PM
Attachments:	OPG Indemnity - Torys, OPG Comments (May 17, 2017).docx Blackline OPG Indemnity.pdf 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK-LSB.docx 20170523-IESO Indemnity Agreement Confidential track changes -ENERGY LSB edits v2.docx

I've received updated draft materials through TBS Legal.

From: Kaufman, Paul (TBS)
Sent: May 24, 2017 10:17 AM
To: Strang, James (TBS)
Cc: Fung, Felix (TBS); Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

James, I spoke to counsel at Energy about the proposed revisions to the boilerplate indemnity agreements. I told her that some minor clarifications to the existing text likely wouldn't raise concerns here, but that even minor changes might add some time to the approvals process on our end.

The changes that OPG is proposing are more substantive in nature and in a number of cases seem like they would result in the province assuming more than a reasonable amount of risk. Energy legal agrees with this and it sounds like energy is going to push back pretty hard with OPG. They also understand that we'll need them to provide a rationale for any substantive deviations from the original draft agreements.

It sounds like Energy is hoping to finalize the agreements today or tomorrow and proceed with approvals on their end. They hope to get us a minister-signed request by early next week, but will share the materials that they send up the line in the interim.

I also flagged the appropriations issue and they are going to consider it further. I didn't note the section 22 option because, as discussed, it's not clear if MOF would be comfortable with it. Our branch is going to discuss this file with MOF legal today, and we understand they are also talking to the OFA today.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-23-17 7:02 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Ho, Larissa (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks for this Paul.

We received comments back from OPG and IESO on the Business case as well as on the indemnity agreements. I've attached the updated business case that includes changes to reflect your comments as well as OPG and IESO's comments. Please let us know if you have any further concerns.

On the indemnity agreements, we are working through the proposed changes that both IESO and OPG have proposed to them. The IESO indemnity agreement changes that the IESO has proposed appear to be okay, and I've just made some further edits/comments that I am in the process of clarifying with IESO. Could you please take a look at the attached and let us know if there are any concerns from your end on the changes?

The OPG changes to its indemnity agreement are much more substantial and we are working through them still, however, I am wondering whether you can take a look and let us know if you or your policy clients have any significant concerns as well in the interests of time. The changes seem to be more for clarity, but given that they differ from the standard template language just wanted to make sure TBS is comfortable. Both clean and tracked versions of the OPG indemnity agreement are attached.

If it is easier and would be quicker to have a call to discuss, I would be happy to set something up.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)

Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:

    (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or

    (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

    (d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:

    (a) as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of any Claim;

    (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

DRAFT

(c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

DRAFT

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DRAFT

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")~~,~~

OF THE SECOND PART

WHEREAS the Corporation ~~is~~and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to ~~the implementation of~~(i) the *Ontario Fair Hydro Plan Act* ~~(the "Act~~, *2017* (the "Act"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "Fair Hydro Plan").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation~~due to or as a result of the ~~Act.~~Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. ~~to~~To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of ~~its~~their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the Protected Persons arising specifically~~any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss

of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected ~~Persons' direct role in carrying out~~Person's activities ~~related to~~, acts and/or omissions in the implementation of, or otherwise relating to, the ~~Act (collectively, "Claims" and individually, a "Claim"),~~ Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to ~~Claims~~Losses of a Protected Person:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~but only to the extent that a Protected Person is actually ~~so indemnified or covered~~paid under such insurance policy ~~or fund~~for those Losses; or

(b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was

lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any ~~notice of a Claim that the Protected Person receives~~Losses, the Protected Person ~~must~~shall:

   (a) ~~immediately and without delay~~as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~the~~any Claim~~(s)~~;

   (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

   (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~(s)~~; and

   (d) promptly take all ~~necessary~~reasonable steps to obtain indemnification ~~or coverage~~ to the fullest extent possible under insurance policies ~~or claims funds~~, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

   A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity~~,~~ unless and only to the extent that~~, as a result of~~ such failure~~, the party which was entitled to receive~~ to provide such prompt notice ~~was~~has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim~~(s)~~ and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim~~(s)~~ without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim~~(s)~~, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of

a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. ~~For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~ The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the

foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. ~~6.~~ This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. ~~7.~~ The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **ONTARIO**
POWER GENERATION INC.
~~in the presence of~~)

)

_____) By: _____
~~Name:~~)

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

By:_____

Glenn Thibeault
Minister of Energy

Document comparison by Workshare Compare on May-18-17 3:01:44 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23514933/1
Description	#23514933v1<TorysAtWork> - OPG Indemnity - Torys, OPG Comments (May 17, 2017)
Document 2 ID	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Description	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	124

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On May 11, 2017 t~~T~~he Government introduced Bill 132, which, if passed would ~~is proposing to enact introduce~~ legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), agents (in the case of IESO), directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

Commented [HM2]: I've updated

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

~~***OPG – Role in Implementation of ONFHP***~~

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

~~The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.~~

~~As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.~~

Formatted: Space After: 6 pt

Formatted: Right: 0"

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Draft

~~Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.~~

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market.~~.~~ IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM3]: OPG/IESO input required on this regarding the specific risks they are concerned about.

~~The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.~~

~~Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.~~

~~To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.~~

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees, as well as IESO's agents is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below). Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG), agents (in the case of the IESO), directors, officers and employees, these Indemnities

Draft

would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

Formatted: Normal, None

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action

or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against ~~OPG or IESO's directors, officers, and employees~~the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited ~~specifically~~ to claims arising in relation

Draft

to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the ~~director~~protected persons.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to ~~c~~lossesl~~aim~~s:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~ to the extent that the protected person is actually s~~o indemnified or covered~~paid under such policy ~~or fund~~for those losses; or

(b) for which other indemnities are already provided to the protected person but only to the extent that the Protected Person is actually so indemnified for those losses by such indemnities;

(c) ~~brought about or contributed to by~~is the result of the~~a~~ Protected Person's dishonesty, gross negligence or willful misconduct, but only such ~~if a judgment or other final adjudication adverse to the Protected Person establishes that there was~~ dishonesty, gross negligence or willful misconduct on the Protected Person's part ~~which was material to the cause of action as adjudicated~~has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~;~~ or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [PMK4]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [HM5]: Gross negligence is used to be consistent with the OBCA requirement.

Commented [PMK6]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

Commented [HM7]: I've changed the reference accordingly.

Draft

OPG's indemnity, with respect to clause (c) above, further provides that the Province agrees that it does not intend that any failure by a Protected Person to conduct a reasonable investigation with respect to advising the OPG about misrepresentations in any prospectus, registration statement or other securities/offering document, shall constitute "gross negligence" or "wilful misconduct" for this purposes of clause (c) above and does not disentitle the protected person from the Indemnity. This language has been included at the request of OPG in order to provide additional clarity to limit the OPG's liability with respect to carrying out any investigation of securities/offering documents.

The Indemnities would not apply with respect to ~~claims~~ losses for which coverage is provided and paid under insurance, or which are covered by another indemnity~~-~~under which the protected person is already so indemnified~~already provided~~;~~,~~ for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities;~~,~~ or for claims arising from circumstances where the ~~corporation, director, officer or employee~~protected persons did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face ~~risk~~risks of liability which ~~extends~~extend beyond the typical operations risk of the Corporation ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person arising ~~specifically~~ as a result of, or in connection with, the ~~Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**

~~2. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a~~ payment has been made thereunder to such Protected Person~~ is actually so indemnified or covered under such policy;~~ or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the~~ payment has been made to such Protected Person ~~is actually so indemnified by~~under such indemnities; or

(c) ~~brought about or contributed to by a~~is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.

(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder~~ in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~(s)~~;

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person;

~~(h)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~each Protected Person shall co-operate fully with the Province in connection with the same, and ~~the~~each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Formatted: Indent: Left: 1.5"

Formatted: Font color: Green

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of	**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
_____ Name:	By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From:	Whitfield, Tobias P. (MOF)
To:	Ronald Kwan; John Kim
Subject:	FW: OPG/IESO Indemnities - Section 28 Approvals
Date:	Wednesday, May 24, 2017 10:30:31 AM
Attachments:	OPG Indemnity - Torys, OPG Comments (May 17, 2017).docx Blackline OPG Indemnity.pdf 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK-LSB.docx 20170523-IESO Indemnity Agreement Confidential track changes -ENERGY LSB edits v2.docx

FYI.

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

From: Kaufman, Paul (TBS)
Sent: May 24, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi – as discussed with Malle just now, attached are the latest materials that we received through energy legal, and a note to the TBS client that summarizes a discussion I had this morning with Harkamal about this.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:17 AM
To: Strang, James (TBS)
Cc: Fung, Felix (TBS); Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

James, I spoke to counsel at Energy about the proposed revisions to the boilerplate indemnity agreements. I told her that some minor clarifications to the existing text likely wouldn't raise concerns here, but that even minor changes might add some time to the approvals process on our end.

The changes that OPG is proposing are more substantive in nature and in a number

of cases seem like they would result in the province assuming more than a reasonable amount of risk. Energy legal agrees with this and it sounds like energy is going to push back pretty hard with OPG. They also understand that we'll need them to provide a rationale for any substantive deviations from the original draft agreements.

It sounds like Energy is hoping to finalize the agreements today or tomorrow and proceed with approvals on their end. They hope to get us a minister-signed request by early next week, but will share the materials that they send up the line in the interim.

I also flagged the appropriations issue and they are going to consider it further. I didn't note the section 22 option because, as discussed, it's not clear if MOF would be comfortable with it. Our branch is going to discuss this file with MOF legal today, and we understand they are also talking to the OFA today.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-23-17 7:02 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Ho, Larissa (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks for this Paul.

We received comments back from OPG and IESO on the Business case as well as on the indemnity agreements. I've attached the updated business case that includes changes to reflect your comments as well as OPG and IESO's comments. Please let us know if you have any further concerns.

On the indemnity agreements, we are working through the proposed changes that both IESO and OPG have proposed to them. The IESO indemnity agreement changes that the IESO has proposed appear to be okay, and I've just made some further edits/comments that I am in the process of clarifying with IESO. Could you please take a look at the attached and let us know if there are any concerns from your end on the changes?

The OPG changes to its indemnity agreement are much more substantial and we are working through them still, however, I am wondering whether you can take a look and let us know if you or your policy clients have any significant concerns as well in the interests of time. The changes seem to

be more for clarity, but given that they differ from the standard template language just wanted to make sure TBS is comfortable. Both clean and tracked versions of the OPG indemnity agreement are attached.

If it is easier and would be quicker to have a call to discuss, I would be happy to set something up.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca

Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:

    (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or

    (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

    (d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:

    (a) as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of any Claim;

    (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

DRAFT

(c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

DRAFT

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DRAFT

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")~~,~~

OF THE SECOND PART

WHEREAS the Corporation ~~is~~and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to ~~the implementation of~~(i) the *Ontario Fair Hydro Plan Act* ~~(the "Act~~, *2017* (the "Act"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "Fair Hydro Plan").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation~~due to or as a result of the ~~Act.~~Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. ~~to~~To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of ~~its~~their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the Protected Persons arising specifically~~any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss

of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected ~~Persons' direct role in carrying out~~Person's activities ~~related to~~, acts and/or omissions in the implementation of, or otherwise relating to, the ~~Act (collectively, "Claims" and individually, a "Claim"),~~ Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to ~~Claims~~Losses of a Protected Person:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~but only to the extent that a Protected Person is actually ~~so indemnified or covered~~paid under such insurance policy ~~or fund~~for those Losses; or

(b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was

lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any ~~notice of a Claim that the Protected Person receives~~Losses, the Protected Person ~~must~~shall:

   (a) ~~immediately and without delay~~as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~the~~any Claim~~(s)~~;

   (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

   (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~(s)~~; and

   (d) promptly take all ~~necessary~~reasonable steps to obtain indemnification ~~or coverage~~ to the fullest extent possible under insurance policies ~~or claims funds~~, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

   A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity~~,~~ unless and only to the extent that~~, as a result of~~ such failure~~, the party which was entitled to receive~~ to provide such prompt notice ~~was~~has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim~~(s)~~ and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim~~(s)~~ without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim~~(s)~~, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of

a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. ~~For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~ The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the

foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. ~~6.~~ This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. ~~7.~~ The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **ONTARIO**
POWER GENERATION INC.
~~in the presence of~~)

)

_____) By: _____
~~Name:~~)

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

By:_____

Glenn Thibeault
Minister of Energy

Document comparison by Workshare Compare on May-18-17 3:01:44 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23514933/1
Description	#23514933v1<TorysAtWork> - OPG Indemnity - Torys, OPG Comments (May 17, 2017)
Document 2 ID	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Description	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	124

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On May 11, 2017 t~~T~~he Government introduced Bill 132, which, if passed would ~~is proposing to enact introduce~~ legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), agents (in the case of IESO), directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

Commented [HM2]: I've updated

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

~~***OPG – Role in Implementation of ONFHP***~~

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

~~The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.~~

~~As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.~~

Formatted: Space After: 6 pt

Formatted: Right: 0"

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Draft

~~Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.~~

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market.~~.~~ IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM3]: OPG/IESO input required on this regarding the specific risks they are concerned about.

~~The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.~~

~~Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.~~

~~To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.~~

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees, as well as IESO's agents is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below). Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG), agents (in the case of the IESO), directors, officers and employees, these Indemnities

Draft

would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

Formatted: Normal, None

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action

or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against ~~OPG or IESO's directors, officers, and employees~~the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited ~~specifically~~ to claims arising in relation

Draft

to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the ~~director~~protected persons.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to ~~c~~lossesl~~aim~~s:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~ to the extent that the protected person is actually s~~o indemnified or covered~~paid under such policy ~~or fund~~for those losses; or

(b) for which other indemnities are already provided to the protected person but only to the extent that the Protected Person is actually so indemnified for those losses by such indemnities;

(c) ~~brought about or contributed to by~~is the result of the~~a~~ Protected Person's dishonesty, gross negligence or willful misconduct, but only such ~~if a judgment or other final adjudication adverse to the Protected Person establishes that there was~~ dishonesty, gross negligence or willful misconduct on the Protected Person's part ~~which was material to the cause of action as adjudicated~~has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~;~~ or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [PMK4]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [HM5]: Gross negligence is used to be consistent with the OBCA requirement.

Commented [PMK6]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

Commented [HM7]: I've changed the reference accordingly.

Draft

OPG's indemnity, with respect to clause (c) above, further provides that the Province agrees that it does not intend that any failure by a Protected Person to conduct a reasonable investigation with respect to advising the OPG about misrepresentations in any prospectus, registration statement or other securities/offering document, shall constitute "gross negligence" or "wilful misconduct" for this purposes of clause (c) above and does not disentitle the protected person from the Indemnity. This language has been included at the request of OPG in order to provide additional clarity to limit the OPG's liability with respect to carrying out any investigation of securities/offering documents.

The Indemnities would not apply with respect to ~~claims~~ losses for which coverage is provided and paid under insurance, or which are covered by another indemnity~~-~~under which the protected person is already so indemnified~~already provided~~;~~,~~ for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities;~~,~~ or for claims arising from circumstances where the ~~corporation, director, officer or employee~~protected persons did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face ~~risk~~risks of liability which ~~extends~~extend beyond the typical operations risk of the Corporation ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person arising ~~specifically~~ as a result of, or in connection with, the ~~Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**

~~2. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a~~ payment has been made thereunder to such Protected Person~~ is actually so indemnified or covered under such policy;~~ or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the~~ payment has been made to such Protected Person ~~is actually so indemnified by~~under such indemnities; or

(c) ~~brought about or contributed to by a~~is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.

(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder~~ in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~(s)~~;

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person;

~~(h)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~each Protected Person shall co-operate fully with the Province in connection with the same, and ~~the~~each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Formatted: Indent: Left: 1.5"

Formatted: Font color: Green

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of	**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
_____ Name:	By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From: John Kim
To: Tobias P. Whitfield (MOF)
Cc: Malle Hanslep (MOF); Ronald Kwan
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals
Date: Monday, June 05, 2017 4:12:29 PM
Attachments: Briefing note - OPG IESO Indemnities v2b.doc

Fyi.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Tuesday, May 23, 2017 10:25 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Felix Fung (MOF) <Felix.Fung@ontario.ca>; Paul Kaufman (MOHLTC) <Paul.Kaufman@ontario.ca>
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Sorry folks, attached is the latest BN.

From: Strang, James (TBS)
Sent: May 23, 2017 9:58 AM
To: Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca)
Cc: Kim, John (OFA); Fung, Felix (TBS); Kaufman, Paul (TBS)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Ron,

Energy is preparing a s28 FAA approval request related to OPG and IESO requests for indemnities related to their roles in implementing Ontario Fair Hydro Plan.

I've attached a draft note that is based on the draft materials provided in the second email. The third email indicates a further request to broaden coverage of indemnities that Energy is working on.

Since this is related to global adjustment refinancing, including market offerings, the OFA should be providing advice, but not sure exactly who would be providing that advice regarding a s28 request.

I'm also recommending that should there be a decision to provide the indemnities, it be done under Section 22 of the FAA.

James

Indemnities to OPG/IESO – Implementing Proposed Ontario Fair Hydro Act (if passed)

ISSUE

OPG and IESO are specifically asking for indemnities to the IESO, OPG (the entities) and their respective directors, officers and employees in order to allow them to carry out their roles in implementing the Ontario Fair Hydro Plan (OFHP), primarily Global Adjustment refinancing.

The Ministry indicates both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").

Pending – May 18 update from TBS Legal – Energy decision pending on revised ask from OPG/IESO - a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation).

MOF RECOMMENDATION

Based on materials provided by ENERGY, TBS staff are recommending that the Ministry pursue providing the requested indemnities under Section 22(1) of the FAA – that the Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person.

Should there be in the future a payment of an indemnity, it could be made under Section 12 of the FAA – Any amount required to be paid by or on behalf of the Crown by the terms of a guarantee or indemnity given pursuant to this or any other Act may be paid by the Minister of Finance from the Consolidated Revenue Fund.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25% for a typical residential consumer, starting in the summer of 2017. About half a million small businesses and farms are also expected to benefit. Major components include:

- Refinancing the Global Adjustment (GA)
- Electricity Social Programs moving to being funded from voted appropriations

- Extending the Industrial Conservation Initiative
- Improving Sector Efficiency
- Modernizing Ontario's Electricity Market

It was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Refinancing a portion of GA provides significant and immediate rate relief, about 17% in 2017-18, by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

Implementation of OFHP is on-going. On May 9 and 10, 2017, the Ministry brought proposed legislation forward to TB/MBC and LRC, with the bill being introduced in the Legislature on May 11, 2017. In June 2017, the Ministry is bringing forward regulations to further facilitate implementation.

Both IESO and OPG have specifically asked for indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Regarding roles, the Ministry indicates for:

- OPG – GA refinancing would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity) and that associated risks are beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

- IESO – proposed legislation would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the OFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the OFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO.

FINANCIAL IMPLICATIONS

The Ministry's submission indicates there is a risk that these corporations and key persons may be subject to increased liability specifically due to their roles with the OFHP. This risk arises in part because of the kind of market that OPG, and IESO

indirectly, are to participate in, and the steps that investors could take to protect their investments.

The Ministry indicates the risk to the Province of giving the indemnities is undeterminable at this time (cannot be quantified), but that the exposure will be linked to the OPG special purpose entity's debt offerings" of accumulated deferred Global Adjustment costs.

From the latest TB/MBC submission, in 2017-18 deferred global adjustment is forecasted to be about $2.5B, of which 51% is to be financed directly in capital markets, and $49%, about $1.1B, in an equity injection to OPG from the Province, with additional OPG shares being given to the province as OPG's sole shareholder.

With the planned approach capping electricity rate increases at 2% till 2020, total accumulated debt to be refinanced reaches a peak of $24.2B by 2027, financed by on-going Provincial equity injections and debt offerings into the market with subsequent collection of deferred amounts from ratepayers out to 2047 (See Appendix A). The Ministry indicates tentative timing for debt offerings to commence is Fall 2017.

Liabilities due to roles with the OFHP

In addition to the IESO and OPG roles outlined under Background, the nature of the indemnities, providing protection due to risk of increased liability specifically due to their roles with the OFHP, suggests that it could possible that if OPG and IESO suffered a loss because of, for example, higher borrowing costs elsewhere that could be shown to be attributable to the OFHP activities, those costs could be within the scope of the proposed indemnities.

Voted Appropriations

Although the Ministry indicates the risk associated with providing the indemnities are undeterminable, the amount of accumulated debt is quite significant. This raises a question about whether the Ministry has sufficient, if any, appropriations in place for 2017-18 to enter into the agreement to provide the indemnities.

- Sections 11.3(1) of the FAA indicates no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation.

- Section 11.2(1) indicates no appropriation shall be charged with an amount that is for a purpose other than that for which the appropriation was provided.

Currently there are no explicit appropriations for GA refinancing other than the $1.1B investment asset for the projected OPG equity injection requirements in 2017-18. There is about $500M in Transfer Payments related for the Electricity Social Programs, that are to be funded from voted appropriations starting in 2017-18 should enabling legislation pass.

Appropriations – Alternate Approach

An alternate approach may be to have, under Section 22.1 of the FAA, the LGIC authorize the Minister of Finance to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person. Should claim be made, a payment of any amount could be made under Section 12 of the FAA, paid by the Minister of Finance from the Consolidated Revenue Fund.

- Section 22. (1) indicates the Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person.

- Section 12 indicates any amount required to be paid by or on behalf of the Crown by the terms of a guarantee or indemnity given pursuant to this or any other Act may be paid by the Minister of Finance from the Consolidated Revenue Fund. .

BUSINESS CASE

Why is the section 28 approval needed?

The Province is being asked to agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

How has potential Crown liability been limited by the proposed indemnity?

The indemnities would not apply with respect to claims:

- Where coverage is provided under an insurance policy or claims fund to the extent a protected person is covered by a policy or fund.
- Where other indemnities already exist for protected persons.
- Brought about or contributed to by a protected person's dishonesty, gross negligence or willful misconduct
- Arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty

Measures to mitigate risk with securities:

- The Ministry has been worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

- The proposed legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:
    - OPG issuances of subordinated debt to the SPV/Trust representing up to 49% of total borrowing; and
    - Conditional (springing) guarantees by the Province to provide a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).
- The Ministry indicates OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds.
    - Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.
    - OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.
- The proposed legislation provides for provincial assurances, guarantees and a statutory cause of action.
    - Provincial assurance provision focuses on limiting possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making).
    - Guarantee provisions are intended to backstop the provincial assurance provision and provide that:
        - The Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
        - The Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.
    - Statutory cause of action – pending, check with legal?

What are the possible consequences if section 28 approval is not given?

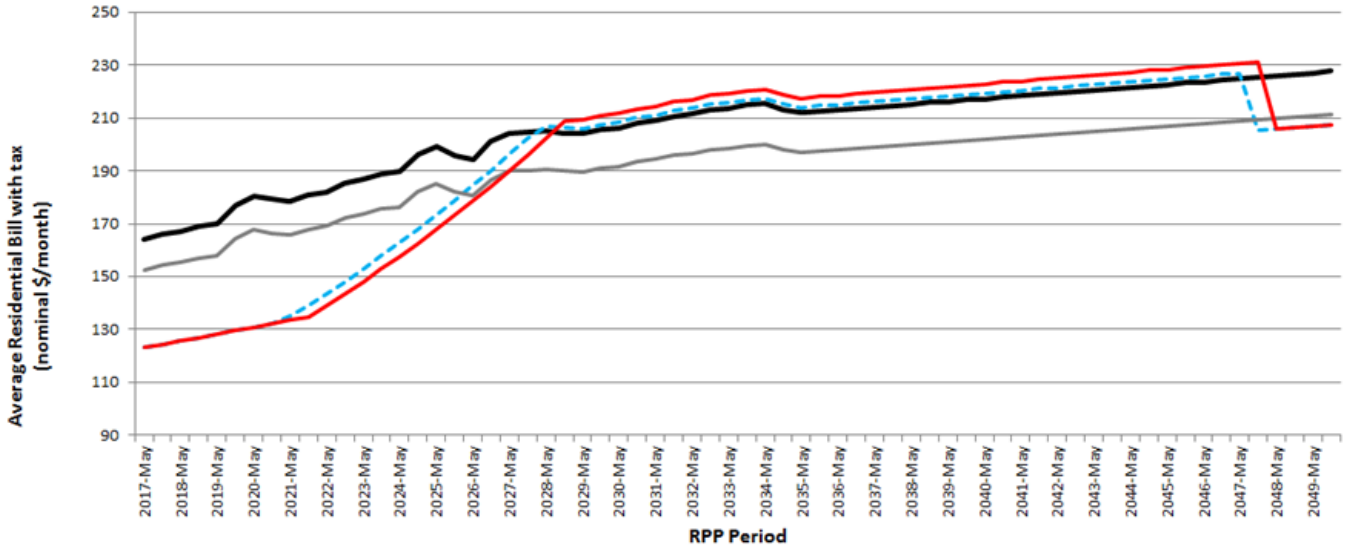
Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

If the indemnities are not provided, this could impact OPG and IESO directors' willingness to undertake activities that would fall outside of the scope of typical business

activities and mandate, due to the risk of liability, and consequently jeopardizing the successful implementation of the planned approach to GA refinancing component of the ONFHP. This could result in the planned approach to GA refinancing having to be funded from voted appropriations.

James Strang
General Government, Planning and Resources / PEMD
May 19, 2017

Appendix A: GA Smooting for RPP – Eligible Only (From May 9 TB/MBC Briefing Note & LRC package May 10, 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

Appendix B – Commentary from the Ministry's May 9, 2017 TB/MBC Submission

OPG Financing / OPG Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The proposed legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.
- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;
- Funds from the Province would flow from the Ontario Financing Authority (OFA); and
- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.
- It is anticipated that the initial equity injection would take place as early as June 2017.

Through PRRT, the Ministry of Energy received approval for the creation of an operating asset "OPG Share Purchase" and expenditure increase of $1.1billion in 2017-18 within Vote 2905-5, which is based on the latest estimates by IESO, and provides flexibility to account for forecasting uncertainty. This approval is pending passage of the proposed legislation.

OPG will provide a two year forecast of its equity requirements to the Ministry on annual basis, as part of OPG's business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy's concurrence process.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.
- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

IESO's Credit Facilities

IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current "line of credit" with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO's contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

From:	Nelms, Scott (MOF)
To:	Ronald Kwan
Subject:	FW: OPG/IESO Indemnities -s.28 materials
Date:	Friday, June 23, 2017 10:01:54 AM
Attachments:	20170601-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx ATT00001.htm 20170601-IESO Indemnity Agreement Confidential track changes -v4.docx ATT00002.htm 20170601-OPG Indemnity draft 3.docx ATT00003.htm 20170601-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT.DOCX ATT00004.htm

---

Fyi – I think this is the old package. ENE is working on revisions and a final.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: June 22, 2017 9:37 AM
To: Schlaepfer, Martin (ENERGY)
Cc: Nelms, Scott (MOF); Hume, Steen (ENERGY)
Subject: Fwd: OPG/IESO Indemnities -s.28 materials

Hi - this is the current s. 28 package. It is expected to change in response to comments from the OFA that we should receive as they consider our responses to their questions, but these are the current drafts.

Carolyn Calwell
416.212.8392

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG, its directors, officers or employees in carrying out its roles with respect to implementing the Ontario Fair Hydro Plan.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to OPG's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers and employees against any claims	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to IESO's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the ONFHP.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation ~~is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").~~and/or one or more its agents, directors, officers or employees, may, or in certain circumstances is or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan").

AND WHEREAS -the Corporation, and its directors, officers ~~and~~ or employees, may~~, as a result of the Corporation's role in the implementation of the Act,~~ face ~~risk~~risks~~s~~ of liability ~~which extends~~extend ~~beyond the typical operations risk of the Corporation~~due to or as a result of the Fair Hydro Plan ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands, ~~and~~ liabilities, taxes, fines, penalties, statutory payments, judgments

Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Commented [A1]: NTD: In process of confirming whether this applies to IESO. This may be taken out or further revised depending on further input from them.
Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight

and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person~~—~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising directly or indirectly, as a result of the Corporation's and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan. ~~arising specifically as a result of, or in connection with, the Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim").

~~, [IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]~~

~~1. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of ~~of a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a payment has been made thereunder to such~~such Protected Person is actually paid under such insurance policy or claims fund~~ is actually so indemnified or covered under such policy~~; or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the payment has been made to such~~the~~a~~ Protected Person is actually so indemnified for those Losses by such indemnities~~ is actually so indemnified by under such indemnities~~; or

(c) ~~brought about or contributed to by a~~that are~~is~~ the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~.~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation

Formatted: Font: 11 pt

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Times New Roman, Highlight

shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation or a financing entity, as applicable with reasonable grounds for believing any prospectus, registration statements, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentations shall constitute "gross negligence" or "willful misconduct" for purposes of this section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder ~~in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s)~~(c);~~;

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s)~~(c)~~ that is in the possession or under the control of the Protected

Commented [A2]: Updated wording from OPG with LSB minor edits for clarification.

Formatted: Font: Times New Roman, Highlight

Formatted: Font: Times New Roman, Highlight

Formatted: Font color: Auto

Formatted: Font color: Auto

DRAFT

Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

~~(b)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a ~~the~~ Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~ Losses to which this indemnity extends.

~~3.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~4.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5"

Formatted: Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

   (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province

Formatted: Font: CG Times, Highlight

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Font: CG Times, Highlight

Formatted: Font: CG Times, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Times New Roman, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Highlight

under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

~~5.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~6.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

~~in the presence of~~)

)

) By: _____

~~Name:~~)

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

DRAFT

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. A Protected Person shall not be entitled to be indemnified in respect of Losses~~This indemnity does not apply with respect to Losses~~, or a portion thereof ~~of a Protected Person~~:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected person is actually paid under such insurance policy or claims fund~~but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses~~; or

   (b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

   ~~(c) is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity;~~ for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding Section 2(d),~~

   ~~(d)~~(c) ~~the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable~~

Commented [A1]: Updated wording from OPG with LSB minor edits for clarification.

~~securities laws contained no misrepresentation shall constitute "gross negligence" or "wilfulwillful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(e) to the extent arising from any circumstances in which a Protected Person did not reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. ~~In order to be entitled to indemnification hereunder in respect of any Losses, the~~Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the~~any~~ Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps ~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

~~A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.~~

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any~~all~~ Losses in respect of a Claim will be ~~fully~~ indemnified

Formatted: Font: Not Bold

Commented [A2]: Changes made to align with IESO indemnity

under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or~~,~~ delayed~~, or conditioned~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~4.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

Commented [A3]: Re-inserted as discussed.

~~5.~~7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with ~~any~~ a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty~~ ninety (~~2~~30) days ~~of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested~~of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

~~6.~~8. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the

request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.~~The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).~~

~~7.~~9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation)~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to~~), and subject to: bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally~~; ~~to~~ the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;~~, to~~ section 11.3 of the *Financial Administration Act* (Ontario); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

~~8.~~10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

Formatted: Highlight

Commented [A4]: New wording of OPG

Commented [A5]: I've made some changes to this section per internal discussions.

~~9.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~10.~~12. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year~~of June, 2017~~ first above written~~.

ONTARIO POWER GENERATION INC.

By: _____

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

By:_____

Glenn Thibeault
Minister of Energy

DRAFT

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132, received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "Act). The Act enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), and respective directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 13, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

3. BACKGROUND

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it

was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

Draft

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below. Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be paid under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG),

agents (in the case of the IESO), directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Act prohibit/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil

proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to IESO and OPG's respective roles in relation to implementing the

ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided and to the extent already paid under such insurance, or other indemnification is provided, to the extent the individual is so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the OPG and IESO Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Draft

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors and officers do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the

successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

From:	Ronald Kwan
To:	Bruno Amara
Cc:	Gavin He; John Kim
Subject:	FW: OPG/IESO Indemnities -s.28 materials
Date:	Friday, June 23, 2017 11:19:15 AM
Attachments:	20170601-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx ATT00001.htm 20170601-IESO Indemnity Agreement Confidential track changes -v4.docx ATT00002.htm 20170601-OPG Indemnity draft 3.docx ATT00003.htm 20170601-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT.DOCX ATT00004.htm

---

Hi,

Do you have this set, or a revised set?

Thanks,
Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:01
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities -s.28 materials

Fyi – I think this is the old package. ENE is working on revisions and a final.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: June 22, 2017 9:37 AM
To: Schlaepfer, Martin (ENERGY)
Cc: Nelms, Scott (MOF); Hume, Steen (ENERGY)
Subject: Fwd: OPG/IESO Indemnities -s.28 materials

Hi - this is the current s. 28 package. It is expected to change in response to comments from the OFA that we should receive as they consider our responses to their questions, but these are the current drafts.

Carolyn Calwell
416.212.8392

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG, its directors, officers or employees in carrying out its roles with respect to implementing the Ontario Fair Hydro Plan.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to OPG's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers and employees against any claims	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to IESO's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the ONFHP.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation ~~is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").~~and/or one or more its agents, directors, officers or employees, may, or in certain circumstances is or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan").

AND WHEREAS -the Corporation, and its directors, officers ~~and~~ or employees, may~~, as a result of the Corporation's role in the implementation of the Act,~~ face ~~risk~~risks~~s~~ of liability ~~which extends~~extend ~~beyond the typical operations risk of the Corporation~~due to or as a result of the Fair Hydro Plan ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands, ~~and~~ liabilities, taxes, fines, penalties, statutory payments, judgments

Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Commented [A1]: NTD: In process of confirming whether this applies to IESO. This may be taken out or further revised depending on further input from them.
Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight

and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person~~—~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising directly or indirectly, as a result of the Corporation's and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan. ~~arising specifically as a result of, or in connection with, the Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim").

~~, [IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]~~

~~1. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of ~~of a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a payment has been made thereunder to such~~such Protected Person is actually paid under such insurance policy or claims fund~~ is actually so indemnified or covered under such policy~~; or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the payment has been made to such~~the~~a~~ Protected Person is actually so indemnified for those Losses by such indemnities~~ is actually so indemnified by under such indemnities~~; or

(c) ~~brought about or contributed to by a~~that are~~is~~ the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~.~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation

Formatted: Font: 11 pt

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Times New Roman, Highlight

shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation or a financing entity, as applicable with reasonable grounds for believing any prospectus, registration statements, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentations shall constitute "gross negligence" or "willful misconduct" for purposes of this section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder ~~in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s)~~(c);~~;

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s)~~(c)~~ that is in the possession or under the control of the Protected

Commented [A2]: Updated wording from OPG with LSB minor edits for clarification.

Formatted: Font: Times New Roman, Highlight

Formatted: Font: Times New Roman, Highlight

Formatted: Font color: Auto

Formatted: Font color: Auto

DRAFT

Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

~~(b)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a ~~the~~ Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~ Losses to which this indemnity extends.

~~3.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~4.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5"

Formatted: Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

   (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province

Formatted: Font: CG Times, Highlight

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Font: CG Times, Highlight

Formatted: Font: CG Times, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Times New Roman, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Highlight

under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

~~5.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~6.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

~~in the presence of~~)

)

) By: _____

~~Name:~~)

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

DRAFT

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. A Protected Person shall not be entitled to be indemnified in respect of Losses~~This indemnity does not apply with respect to Losses~~, or a portion thereof ~~of a Protected Person~~:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected person is actually paid under such insurance policy or claims fund~~but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses~~; or

   (b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

   ~~(c) is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity;~~ for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding Section 2(d),~~

   ~~(d)~~(c) ~~the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable~~

Commented [A1]: Updated wording from OPG with LSB minor edits for clarification.

~~securities laws contained no misrepresentation shall constitute "gross negligence" or "wilfulwillful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(e) to the extent arising from any circumstances in which a Protected Person did not reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. ~~In order to be entitled to indemnification hereunder in respect of any Losses, the~~Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the~~any~~ Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps ~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

~~A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.~~

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any~~all~~ Losses in respect of a Claim will be ~~fully~~ indemnified

Formatted: Font: Not Bold

Commented [A2]: Changes made to align with IESO indemnity

under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or~~,~~ delayed~~, or conditioned~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~4.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

Commented [A3]: Re-inserted as discussed.

~~5.~~7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with ~~any~~ a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty~~ ninety (~~2~~30) days ~~of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested~~of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

~~6.~~8. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the

request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.~~The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).~~

~~7.~~9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation)~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to~~), and subject to: bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally~~; ~~to~~ the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;~~, to~~ section 11.3 of the *Financial Administration Act* (Ontario); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

~~8.~~10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

Formatted: Highlight

Commented [A4]: New wording of OPG

Commented [A5]: I've made some changes to this section per internal discussions.

~~9.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~10.~~12. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year~~of June, 2017~~ first above written~~.

ONTARIO POWER GENERATION INC.

By: _____

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

By:_____

Glenn Thibeault
Minister of Energy

DRAFT

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132, received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "Act). The Act enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), and respective directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 13, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

3. BACKGROUND

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it

was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

Draft

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below. Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be paid under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG),

agents (in the case of the IESO), directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Act prohibit/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil

proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to IESO and OPG's respective roles in relation to implementing the

ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided and to the extent already paid under such insurance, or other indemnification is provided, to the extent the individual is so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the OPG and IESO Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Draft

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors and officers do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the

successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Tuesday, June 27, 2017 3:33:13 PM

Ron

Further to last email.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 27, 2017 3:31 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby,

As discussed – the intention is that the Ministry would provide the IESO/OPG (as corporations) with coverage for any losses the corporation's themselves suffer as a result of Fair Hydro Plan activities the Protected Persons undertake. Thus your interpretation is correct. If a director/officer/employee of OPG or IESO made a claim on the OPG/IESO indemnities, OPG/IESO would potentially be able to make a claim on the Province's indemnity for this out-of-pocket expense (if not covered by an insurance policy).

For greater clarity, the Indemnity Agreement would still prevent a director, officer, or employee from double-dipping (i.e. getting indemnified from the Province and OPG/IESO for the same losses).

I hope this clarifies matters. I understand that OFA will update their materials to provide this further clarity, but if you require anything else or have further questions please me know.

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO

SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Whitfield, Tobias P. (MOF)
Sent: June-27-17 9:51 AM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal,

It has occurred to me that even though we require the use of existing indemnities before calling on the Provincial indemnity, if a director/officer/employee of OPG or IESO made a claim on the OPG/IESO indemnities, that would allow the OPG/IESO to make a claim on the Province's indemnity (if not covered by an insurance policy).

Is this a correct interpretation and has this possibility been discussed?

Thanks
Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:46 PM
To: Whitfield, Tobias P. (MOF); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby – as discussed – OPG revised section 2 (see highlighted language) so that any directors, officers, employees of a financing entity are still included in the definition of "Protected Person" where he/she is a director, officer, employee of OPG or OPG's Subs.

Other than this, their changes for the most part were more word smithing. I've highlighted in yellow the changes OPG agreed to stand down on.

Thanks very much again,

Harkamal

From: Whitfield, Tobias P. (MOF)

Sent: June-26-17 4:34 PM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal – sure, I am available and in my office.

Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:23 PM
To: Bruno Amara
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks very much for this Bruno – I'll send you over a finalized package of everything once Carolyn approves it.

Toby also, just a heads up – there is one outstanding substantive change that OPG has come back with. Do you have a few minutes to discuss before end of day?

Please let me know.

Thanks,

Harkamal

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-26-17 4:18 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

See attached proposed edits. I don't believe they are substantive.

Thanks
Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 3:45 PM

To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno – just following up – do you have any comments on this as I will need to send to Carolyn before 5.

Many thanks,

Harkamal

From: Multani, Harkamal (ENERGY)
Sent: June-26-17 10:46 AM
To: 'Bruno Amara'
Cc: 'Salman Qadir'; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

As discussed Friday, here is the cover memo. Could you please review and let me know if you have any comments on this by this afternoon? I've tried to address all of the items OFA had requested be addressed in this.

I am hoping to send you an updated draft of the entire s.28 package later this afternoon.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 10:43 AM
To: Kim, John (OFA)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)

Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca

Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Gavin He; Salman Qadir
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Tuesday, June 27, 2017 9:28:03 AM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03.docx OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03_clean.docx

Hi Ron

Attached for your review is the draft briefing note that we have been working on with MoF Legal. I also want to share back with OPCD on a statement regarding their check with OPG and IESO on accounting treatment. As is the statement is 2nd hand from Energy.

Thanks
Bruno

From: Bruno Amara
Sent: Tuesday, June 27, 2017 9:25 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He

<Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client

privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>

> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM

> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>

>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>

> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and agents of the IESO and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of the corporation or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

~~The Minister of Energy is expecting to sign an Indemnity Agreement in favour of OPG and in favour of IESO.~~

~~The Ministry of Energy notes in its Request for Approval that under the OFHP both OPG and the IESO would carry out activities that fall outside the scope of their existing business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in the best interest of the corporation or in "good faith" with respect to their corporate obligations thereby exposing OPG and/or the IESO to increased liability.~~

~~OPG and IESO state that existing statutory protections do not preclude a party from bringing an action or other civil proceeding against the corporations, or its directors, officers or employees, which may cause additional risk and expenses to defend such claims.~~

~~TIMING~~

~~Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).~~

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- IESO and OPG have stated that without these indemnities and waivers they will not be able to participate in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- ~~It is recommended that the Minister of Finance approve, pursuant to Section 28 of the Financial Administration Act (FAA), the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) per the forms attached as Appendix "C" and Appendix "D" (the "Indemnity Agreements" and individually an "Indemnity Agreement".~~

- ~~IESO and OPG have stated that If the requested Indemnities and waivers are not provided, this could impact their willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan~~

- ~~In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.~~

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

~~**KEY CONSIDERATIONS AND RISKS**~~

~~The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;~~

~~The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.~~

~~The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.~~

~~**Potential Fiscal Impact**~~

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, (see further discussion below), pre-existing protection for director and officers' under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

Commented [A1]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

MENE had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as the IESO and OPG state that without these indemnities and waivers they will not be able to participate in the implementation of the *Ontario fair Hydro Act, 2017*, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are current being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the

~~rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.~~

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected

Formatted: Normal, Justified, Space Before: Auto, After: Auto, No bullets or numbering

Persons in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

~~Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim, including a broad range of types of damages. This also includes punitive and a broad range of types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for defending themselves. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.~~

~~Scope of liability in the Indemnities~~

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

~~Provincial~~ Waiver of claim provision

Formatted: Font: (Default) Arial

Formatted: Font: Bold, Underline

Formatted: Normal, Justified, Level 2, No widow/orphan control, Tab stops: 0.5", List tab

Formatted: Font: (Default) Arial, Bold, Underline

Commented [TPW2]: This might mean that if there is a claim against a director, officer or employee that is covered by a corporate indemnity, the Province will be subject to an indemnity claim by the corporation.

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for willful misconduct, dishonesty or gross negligence.

~~The Indemnity Agreement includes a waiver of claim provision, which is not a normal provision for an indemnity agreement.~~

~~This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan. OPG has specifically requested the waiver as they are carrying out the Fair Hydro Plan activities at the request of the Province, so they should be given this waiver in the indemnity. This does not apply to claims for willful misconduct, dishonesty or gross negligence.~~

~~OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.~~

~~MENE believes the risk associated with providing this waiver is likely low given that it is unlikely that the Province would bring a claim against a Protected Person for acts they would be providing an indemnity to the Protected Person for.~~

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

Formatted: Font: (Default) Arial

Formatted: Normal, No bullets or numbering

Formatted: Font: (Default) Arial

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, (see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

Commented [A3]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

MENE had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as the IESO and OPG state that without these indemnities and waivers they will not be able to participate in the implementation of the *Ontario fair Hydro Act, 2017*, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are current being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

DESCRIPTION OF RISK AND ANY RISK MITIGANTS

Formatted: Font: Bold

~~**Description of Risk and any Risk Mitigants**~~

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Formatted

Formatted: Space Before: Auto, After: Auto, No bullets or numbering

Formatted

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June XX, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

Formatted: Left

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

APPENDIX C

APPENDIX D

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and agents of the IESO and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of the corporation or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- IESO and OPG have stated that without these indemnities and waivers they will not be able to participate in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected Persons

in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

Commented [TPW1]: This might mean that if there is a claim against a director, officer or employee that is covered by a corporate indemnity, the Province will be subject to an indemnity claim by the corporation.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Waiver of claim provision

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for willful misconduct, dishonesty or gross negligence.

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, (see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

Commented [A2]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

MENE had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as the IESO and OPG state that without these indemnities and waivers they will not be able to participate in the implementation of the *Ontario fair Hydro Act, 2017*, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are current being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

DESCRIPTION OF RISK AND ANY RISK MITIGANTS

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.
- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June XX, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

APPENDIX C

APPENDIX D

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He; Shajee Kathirgamanathan
Subject: FW: OPG/IESO indemnity Responses to OFA Questions
Date: Friday, June 23, 2017 4:18:23 PM
Attachments: 20170623- IESO Indemnity Agreement - Draft 4-revised.docx

---

Ron

Email below addresses my confusion. We'll revise slides accordingly.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Friday, June 23, 2017 4:15 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for the multiple emails – there was one correction noted to the IESO indemnity (the version I sent below removed the corporation from the indemnity by error). I've attached a revised version with the corporation re-inserted into the indemnity.

Will let you know if there are further comments.

Apologies again.

Thanks,

Harkamal

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 2:52 PM
To: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Cc: 'Salman Qadir'; 'Bruno Amara'; He, Gavin (OFA); Hanslep, Malle (MOF); McKinlay, Tom (ENERGY)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby,

Attached is what I am sending over to OPG/IESO. I've included the carve out in the OPG indemnity as per your comments (see section 2 of the OPG indemnity attached). This carve would not apply to the IESO indemnity because we are only covering the IESO and its directors, officers and employees.

I hope the added language addresses your concerns. I have also made the minor change you flagged below to both. If the added language does not address your concerns, please let me know.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 1:03 PM
To: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Cc: Salman Qadir; Bruno Amara; He, Gavin (OFA); Hanslep, Malle (MOF); McKinlay, Tom (ENERGY)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thank you very much Toby – I will revise them accordingly and will send you the version I send over to OPG/IESO.

Copying Tom so he is aware as well (he and I have been coordinating between these agreements and the guarantee he is working on to ensure consistency).

Thanks again,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Whitfield, Tobias P. (MOF)
Sent: June-23-17 12:46 PM
To: Multani, Harkamal (ENERGY); Kim, John (OFA)
Cc: Salman Qadir; Bruno Amara; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal,

In addition to our comment regarding the exclusion of the financing entities, we also note that in section 2(d) of the indemnity agreements there is something not quite right with the wording. There may be an "or" missing between "did not have reasonable grounds for believing" and "was reckless as to their belief", although you may have intended something else so I will let you advise.

We have no further comments on those drafts, and would be happy to take another look after the next turn.

Thanks
Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 22, 2017 6:06 PM
To: Kim, John (OFA)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set

of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this ~~———————~~ 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation ~~is~~, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act*, *2017* (the "Act~~").~~"), and (ii) the regulations made pursuant to the Act (the Act and such regulations collectively referred to as the "Fair Hydro Plan");

AND WHEREAS ~~-~~the Corporation, and its directors, officers and/or employees~~,~~ may~~,~~ face risk of liability arising as a result of ~~the Corporation's role~~their respective activities, acts and/or omissions in the implementation of ~~the Act, face risks of liability which extend beyond the typical operations risk of the Corporation.~~, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the ~~Corporation and each of its~~Corporation and its directors, officers, and employees ~~or agents of the Corporation~~ or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~a~~any Protected Person ~~arising~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of~~, or in connection with, the IESO's role in carrying out~~ any civil, criminal, administrative, investigative

Commented [A1]: OPG's indemnity agreement also contains "(iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party"

However, I don't think this would be applicable to the IESO so I have not included here.

and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities ~~related to~~, acts and/or omissions in the implementation of ~~the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that**~~, or otherwise relating to, the ~~**indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**~~Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of ~~a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~payment has been made thereunder to~~ such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~payment has been made to such~~the Protected Person ~~under~~is actually so indemnified for those Losses by such indemnities; or

(c) ~~is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~.~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in

Commented [A2]: OPG has asked for this to be in here. I am not sure this would apply to IESO. If not, it can be taken out. Please confirm.

the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A3]: Re-inserted to be consistent with OPG's indemnity.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, ~~promptly~~as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~.~~(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the ~~Claims~~Claim(s) that is in the possession or under the control of the Protected Person~~; and~~ (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~.~~; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province~~.~~, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends.

Formatted: Highlight

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~5.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~.~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

~~6.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~7.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY**
~~)~~ **SYSTEM OPERATOR**
~~in the presence of~~)
~~)~~
~~)~~
~~)~~ By: _____
~~Name:~~ ~~)~~

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He
Subject: FW: OPG/IESO indemnity Responses to OFA Questions
Date: Friday, June 23, 2017 2:53:30 PM
Attachments: 20170623-OPG Indemnity Agreement - Draft v3-tracked (1).docx
20170623- IESO Indemnity Agreement - Draft 4.docx

Fyi, latest Agreements

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Friday, June 23, 2017 2:52 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby,

Attached is what I am sending over to OPG/IESO. I've included the carve out in the OPG indemnity as per your comments (see section 2 of the OPG indemnity attached). This carve would not apply to the IESO indemnity because we are only covering the IESO and its directors, officers and employees.

I hope the added language addresses your concerns. I have also made the minor change you flagged below to both. If the added language does not address your concerns, please let me know.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 1:03 PM
To: Whitfield, Tobias P. (MOF); Kim, John (OFA)

Cc: Salman Qadir; Bruno Amara; He, Gavin (OFA); Hanslep, Malle (MOF); McKinlay, Tom (ENERGY)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thank you very much Toby – I will revise them accordingly and will send you the version I send over to OPG/IESO.

Copying Tom so he is aware as well (he and I have been coordinating between these agreements and the guarantee he is working on to ensure consistency).

Thanks again,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Whitfield, Tobias P. (MOF)
Sent: June-23-17 12:46 PM
To: Multani, Harkamal (ENERGY); Kim, John (OFA)
Cc: Salman Qadir; Bruno Amara; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal,

In addition to our comment regarding the exclusion of the financing entities, we also note that in section 2(d) of the indemnity agreements there is something not quite right with the wording. There may be an "or" missing between "did not have reasonable grounds for believing" and "was reckless as to their belief", although you may have intended something else so I will let you advise.

We have no further comments on those drafts, and would be happy to take another look after the next turn.

Thanks
Toby

Tobias Whitfield
Counsel, Legal Services Branch

Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Multani, Harkamal (ENERGY)
Sent: June 22, 2017 6:06 PM
To: Kim, John (OFA)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**~~")."~~);

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~due to or as a result of~~arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any financing entities as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, ~~taxes,~~ fines, penalties~~, statutory payments~~, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), ~~in relation to~~as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint,

prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the ~~Corporation's, any of the Corporation's subsidiaries and/or any such other~~ Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

~~2. This indemnity does not apply with respect to Losses of a Protected Person:~~

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, or such financing entities' respective directors, officers, and/or employees.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy ~~but only~~or claims fund to the extent that ~~a~~such Protected Person is actually paid under such insurance policy ~~for those Losses~~or claims fund; or

(b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~if and to the extent~~ that are a ~~court~~result of ~~competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with~~ such ~~Losses resulted from the~~ Protected Person's dishonesty, gross negligence or willful misconduct ~~of the Protected~~, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person ~~claiming such indemnity~~; for greater ~~certainty, and notwithstanding Section 2(d),~~clarity the Province acknowledges and agrees that ~~it does not intend that~~ any ~~failure by~~finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "~~wilful~~willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled

DRAFT

from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) ~~to~~in the ~~extent arising~~case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

4. ~~In order to be entitled to~~ Each Protected Person shall:

4. Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder ~~in respect of any Losses, the Protected Person shall:~~

(a) , as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~any~~the Claim~~:~~(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the ~~Claims~~Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~:~~(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies~~,~~ and/or under indemnities provided by the Corporation, ~~that are~~as referred to in subsections ~~2~~3(a) ~~or~~and (b) above.

A failure on the part of a Protected Person to ~~give prompt notice as~~take any of the actions provided in this section ~~3~~4 shall not affect the rights ~~or obligations of any party to this indemnity unless and only~~of such Protected Person except to the extent that, as a result of such failure ~~to provide such prompt notice has~~, the Province was actually prejudiced ~~the Province~~. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

Formatted: Indent: Left: 0"

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that ~~all~~anyl Losses in respect of a Claim will be ~~fully~~ indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld~~,~~ or delayed ~~or conditioned.~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree

DRAFT

to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5.6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

Formatted: List Paragraph, Left, Line spacing: single

6.8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty (30~~ninety (90) days of ~~any request in writing by a~~ the Protected Person ~~to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect~~completing all steps outlined in section 4 of ~~which such reimbursement or advance is requested.~~this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

7.9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such ~~other~~ Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at

DRAFT

the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation~~)~~), provided that this waiver shall not apply to any claims of gross negligence, dishonesty or willful misconduct agianst a Protected Person who is an individual..

~~8.~~10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation);~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), ~~subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally,~~ to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction~~, to~~; section 11.3 of the *Financial Administration Act* (Ontario~~)~~); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

~~9.~~11. It is the intention of the Province to constitute the Corporation as trustee for the Protected ~~Parties~~Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected ~~Parties~~Persons.

~~10.~~12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~11.~~13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

DRAFT

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year first above written~~of June, 2017.

ONTARIO POWER GENERATION INC.

By: _____

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

By:_____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this ~~———————~~ 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation ~~is~~, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act*, *2017* (the "Act~~").~~"), and (ii) the regulations made pursuant to the Act (the Act and such regulations collectively referred to as the "Fair Hydro Plan");

AND WHEREAS ~~the~~ the Corporation, and its directors, officers and/or employees~~,~~ may~~,~~ face risk of liability arising as a result of ~~the Corporation's role~~their respective activities, acts and/or omissions in the implementation of ~~the Act, face risks of liability which extend beyond the typical operations risk of the Corporation.~~, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the ~~Corporation and each of its~~Corporation's directors, officers, and employees ~~or agents of the Corporation~~ or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~a~~any Protected Person ~~arising~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of~~, or in connection with, the IESO's role in carrying out~~ any civil, criminal, administrative, investigative

Commented [A1]: OPG's indemnity agreement also contains "(iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party"

However, I don't think this would be applicable to the IESO so I have not included here.

and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities ~~related to~~, acts and/or omissions in the implementation of ~~the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that**~~, or otherwise relating to, the ~~**indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**~~Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of ~~a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~payment has been made thereunder to~~ such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~payment has been made to such~~the Protected Person ~~under~~is actually so indemnified for those Losses by such indemnities; or

(c) ~~is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~.~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in

Commented [A2]: OPG has asked for this to be in here. I am not sure this would apply to IESO. If not, it can be taken out. Please confirm.

the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A3]: Re-inserted to be consistent with OPG's indemnity.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, ~~promptly~~as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~.~~(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the ~~Claims~~Claim(s) that is in the possession or under the control of the Protected Person~~; and~~ (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~.~~; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province~~.~~, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends.

Formatted: Highlight

DRAFT

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~5.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~.~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

~~6.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~7.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) _____ **THE**
) **INDEPENDENT ELECTRICITY**
~~in the presence of~~) **SYSTEM OPERATOR**
_____)
_____)_____
_____ By: _____
~~Name:~~)_____

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

By:_____

Glenn Thibeault
Minister of Energy

DRAFT

From: Bruno Amara
To: Ronald Kwan
Subject: FW: OPG/IESO indemnity Responses to OFA Questions
Date: Friday, June 23, 2017 12:42:27 PM
Attachments: June 23 comments.docx

Hi Ron

Some of my thoughts below fyi. As noted, at this point we are waiting for MoF Legal to respond to our latest draft note.

Bruno

From: Bruno Amara
Sent: Friday, June 23, 2017 12:37 PM
To: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Salman, Gavin

I didn't have any major concerns. I notice the corporations have been removed from the indemnity coverage. I know MoF Legal requested that the Financing Entity not be included I wasn't aware that corporations were being removed. But it narrows the scope, I'm fine with that.

The have addressed the one contingency table issue re "low probability" . They modified the language and it is now also in business case. I still have a nitpicking comments about the maximum exposure language in the liability chart (see attached).

I think the business case note is improved. We may want to cut and paste, but probably best to wait for comments on our BN from MoF Legal.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Friday, June 23, 2017 10:43 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow

shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF)

<Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

June 23, 2017 Ministry of Finance Comments

Contingent Liability Chart

Maximum Estimated Financial Exposure: The Contingent Liability Chart indicates that the Province's financial exposure will be linked to the OPG special purposes entity's debt offerings.

Most examples provided, with respect to potential risk of liability, involve potential claims by parties directly or indirectly involved with OPG SPV's debt offerings. It is not clear however that all claims would be tied directly to losses of debt security holders. E.g., potential claims for expenses incurred by a promoter under Canadian securities law. It appears possible that the indemnity may also cover claims for losses unrelated to OPG SPV's debt offerings. E.g., a claim by a commercial entity that believes the OFHP has resulted in business losses (off-grid systems supplier). The statement also appears to be inconsistent with the statement that the risk cannot be quantified.

Suggested wording

Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Friday, June 23, 2017 11:27:34 AM
Attachments:	20170622-IESO Indemnity Agreement Confidential track changes -v4.docx 20170622-OPG Indemnity draft 3.docx 20170622-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT.docx 20170622-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity-DRAFT.xlsx

Hi Scott,

FYI.

Ron

From: Bruno Amara
Sent: June-23-17 11:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron

Yes, Just received. We are reviewing and also working on our briefing note in conjunction with MoF Legal. We will send that to you when we have a good draft.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Friday, June 23, 2017 10:43 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these

documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation's ~~is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act"),and/or one or more its agents,~~ directors, officers and/or employees, may, or in certain circumstances are~~is~~ or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), and (ii) the regulations made pursuant to the Act ~~and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party~~ (the Act and, such regulations ~~and agreements,~~ collectively referred to as the "Fair Hydro Plan").

A**ND WHEREAS** -the Corporation's, ~~and its~~ directors, officers ~~and~~ and/or employees, may~~, as a result of the Corporation's role in the implementation of the Act,~~ face ~~risk~~risks of liability ~~which extends~~extend ~~beyond the typical operations risk of the Corporation~~due to or as a result of the Fair Hydro Plan ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation's ~~and each of its~~ directors, officers, and ~~and employees~~employees ~~or agents of the Corporation~~ or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands, ~~and~~ liabilities, ~~taxes,~~ fines, penalties, ~~statutory payments,~~ judgments

Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Commented [A1]: NTD: In process of confirming whether this applies to IESO. This may be taken out or further revised depending on further input from them.
Formatted: Highlight
Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight

and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person~~—~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising directly or indirectly, as a result of the Corporation's and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan~~, arising specifically as a result of, or in connection with, the Protected Persons' directIESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim")~~.

~~, [IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]~~

~~1. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of ~~of a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a payment has been made thereunder to such~~such Protected Person is actually paid under such insurance policy or claims fund~~ is actually so indemnified or covered under such policy~~; or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the payment has been made to such~~the~~a~~ Protected Person is actually so indemnified for those Losses by such indemnities~~ is actually so indemnified by~~under ~~such indemnities~~; or

(c) ~~brought about or contributed to by a~~that are~~is~~ the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~,~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation~~,~~ with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or

Formatted: Font color: Red, Highlight

Formatted: Highlight

Formatted: Font: 11 pt

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Times New Roman, Highlight

"willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation or a financing entity, as applicable with reasonable grounds for believing any prospectus, registration statements, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentations shall constitute "gross negligence" or "willful misconduct" for purposes of this section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder ~~in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s)~~(c);~~;

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s)~~(c)~~ that is in the possession or under the control of the Protected

Commented [A2]: Updated wording from OPG with LSB minor edits for clarification.

Commented [A3]: OPG has asked for this to be in here. I am not sure this would apply to IESO (not sure if you are review any securities offerings documents in this capacity). If not, it can be taken out.

Formatted: Font: Times New Roman, Highlight

Formatted: Font: Times New Roman, Highlight

Formatted: Font color: Auto

Formatted: Font color: Auto

DRAFT

Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

~~(b)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a ~~the~~ Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~ Losses to which this indemnity extends.

~~3.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~4.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5"

Formatted: Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province

Formatted: Font: CG Times, Highlight

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Font: CG Times, Highlight

Formatted: Font: CG Times, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Times New Roman, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Highlight

under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

~~5.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~6.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

~~in the presence of~~)

)

) By: _____

~~Name:~~)

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation's and/or its subsidiaries' respective directors, officers and/or ~~and/or one or more of its subsidiaries may~~employees may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS ~~the Corporation, its subsidiaries and each of~~Corporation's and/or its subsidiaries' respective directors, officers and/or employees ~~their respective directors, officers and employees~~ may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation's and~~,~~ each of the Corporation's subsidiaries' ~~and each of their~~ respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, ~~taxes,~~ fines, penalties, ~~statutory payments,~~ judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), ~~in relation to~~as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit,

application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the ~~Corporation's, any of the Corporation's subsidiaries and/or any such other~~ Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. A Protected Person shall not be entitled to be indemnified in respect of Losses~~This indemnity does not apply with respect to Losses~~, or a portion thereof ~~of a Protected Person~~:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected P~~p~~erson is actually paid under such insurance policy or claims fund~~but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses~~; or

   (b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

   ~~(c) is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity;~~ for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding Section 2(d),~~

   ~~(d)~~(c) ~~the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or~~

Commented [A1]: Updated wording from OPG with LSB minor edits for clarification.

~~any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilfulwillful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(e) to the extent arising from any circumstances in which a Protected Person did not reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. ~~In order to be entitled to indemnification hereunder in respect of any Losses, the~~Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the~~any~~ Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps ~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

~~A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.~~

Formatted: Font: Not Bold

Commented [A2]: Changes made to align with IESO indemnity

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any~~all~~ Losses in respect of a Claim will be ~~fully~~ indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or~~,~~ delayed~~, or conditioned~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~4.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, ~~with respect to directors, officers and employees of the Corporation~~ this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

Commented [A3]: Re-inserted as discussed.

~~5.~~7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty~~ ninety (9~~3~~0) days ~~of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested~~of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

~~6.~~8. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person~~, who is an individual,~~ whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's

Formatted: Highlight

activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person ~~who is an individual~~ is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.~~The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).~~

Formatted: Highlight

Commented [A4]: New wording of OPG

~~7.~~9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation)~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to~~), and subject to: bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally; to~~ the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;~~ to~~ section 11.3 of the *Financial Administration Act* (Ontario); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

Commented [A5]: I've made some changes to this section per internal discussions.

~~8.~~10. It is the intention of the Province to constitute the Corporation as trustee for the Protected ~~Parties~~ Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected ~~Parties~~Persons.

~~9.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~10.~~12. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year~~of June, 2017 ~~first above written~~.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault

Minister of Energy

DRAFT

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (other than financing entities as defined in the *Act)* and their respective directors, officers and employees.

Commented [HM1]: May come out depending on comments from OFA

Commented [HM2]: May come out depending on comments from OFA.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could, if it chose to, participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order

Draft

to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Commented [HM3]: Same comment as above – reference to the actual corporations may be removed depending on comments from OFA

OPG may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors,

officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities
- Market participants, program participants for issues in liquidity (e.g. short pay)
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities
- Securities commissions regulators (U.S./Canada)
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Commented [HM4]: May need to be updated.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and IESO's directors, officers and employees to increased liability.

Commented [HM5]: TBC

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of this element. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons (as defined in the Indemnities) with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any

such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or

duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Current insurance and indemnities both IESO and OPG provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently OPG maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to Section 2(a) of the Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity is not clear. However, the OPG Indemnity indicates that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language ensures that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

IESO – Insurance and Indemnities

IESO carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the

Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its subsidiaries, other than the financing entities themselves) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Commented [h6]: TBC

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity of OPG's directors/officers/employees as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG or its subsidiaries (not include the financing entities), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the ONFHP under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers and employees against any claims	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out their respective roles with respect to implementing the ONFHP.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporation itself.	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the ONFHP.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Gavin He
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Friday, June 23, 2017 11:22:25 AM
Attachments:	20170622-IESO Indemnity Agreement Confidential track changes -v4.docx 20170622-OPG Indemnity draft 3.docx 20170622-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT.docx 20170622-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity-DRAFT.xlsx

Hi Ron

Yes, Just received. We are reviewing and also working on our briefing note in conjunction with MoF Legal. We will send that to you when we have a good draft.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Friday, June 23, 2017 10:43 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel

Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation's ~~is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act"),and/or one or more its agents,~~ directors, officers and/or employees, may, or in certain circumstances are~~is~~ or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), and (ii) the regulations made pursuant to the Act ~~and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party~~ (the Act and, such regulations ~~and agreements,~~ collectively referred to as the "Fair Hydro Plan").

A**ND WHEREAS** -the Corporation's, ~~and its~~ directors, officers ~~and~~ and/or employees, may~~, as a result of the Corporation's role in the implementation of the Act,~~ face ~~risk~~risks of liability ~~which extends~~extend ~~beyond the typical operations risk of the Corporation~~due to or as a result of the Fair Hydro Plan ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation's ~~and each of its~~ directors, officers, and ~~and employees~~employees ~~or agents of the Corporation~~ or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands, ~~and~~ liabilities, ~~taxes,~~ fines, penalties, ~~statutory payments,~~ judgments

Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Commented [A1]: NTD: In process of confirming whether this applies to IESO. This may be taken out or further revised depending on further input from them.
Formatted: Highlight
Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight
Formatted: Highlight

and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person~~—~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising directly or indirectly, as a result of the Corporation's and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan~~, arising specifically as a result of, or in connection with, the Protected Persons' directIESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim")~~.

~~, [IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]~~

~~1. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of ~~of a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a payment has been made thereunder to such~~such Protected Person is actually paid under such insurance policy or claims fund~~ is actually so indemnified or covered under such policy~~; or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the payment has been made to such~~the~~a~~ Protected Person is actually so indemnified for those Losses by such indemnities~~ is actually so indemnified by~~under ~~such indemnities~~; or

(c) ~~brought about or contributed to by a~~that are~~is~~ the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~,~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation~~,~~ with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or

Formatted: Font color: Red, Highlight

Formatted: Highlight

Formatted: Font: 11 pt

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Times New Roman, Highlight

"willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation or a financing entity, as applicable with reasonable grounds for believing any prospectus, registration statements, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentations shall constitute "gross negligence" or "willful misconduct" for purposes of this section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder ~~in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s)~~(c);~~;

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s)~~(c)~~ that is in the possession or under the control of the Protected

Commented [A2]: Updated wording from OPG with LSB minor edits for clarification.

Commented [A3]: OPG has asked for this to be in here. I am not sure this would apply to IESO (not sure if you are review any securities offerings documents in this capacity). If not, it can be taken out.

Formatted: Font: Times New Roman, Highlight

Formatted: Font: Times New Roman, Highlight

Formatted: Font color: Auto

Formatted: Font color: Auto

DRAFT

Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

~~(b)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a ~~the~~ Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~ Losses to which this indemnity extends.

~~3.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~4.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5"

Formatted: Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province

Formatted: Font: CG Times, Highlight

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Font: CG Times, Highlight

Formatted: Font: CG Times, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Times New Roman, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Highlight

under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

~~5.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~6.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

~~in the presence of~~)

)

) By: _____

~~Name:~~)

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation's and/or its subsidiaries' respective directors, officers and/or ~~and/or one or more of its subsidiaries may~~employees may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS ~~the Corporation, its subsidiaries and each of~~Corporation's and/or its subsidiaries' respective directors, officers and/or employees ~~their respective directors, officers and employees~~ may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation's and~~,~~ each of the Corporation's subsidiaries' ~~and each of their~~ respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, ~~taxes,~~ fines, penalties, ~~statutory payments,~~ judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), ~~in relation to~~as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit,

application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the ~~Corporation's, any of the Corporation's subsidiaries and/or any such other~~ Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. A Protected Person shall not be entitled to be indemnified in respect of Losses~~This indemnity does not apply with respect to Losses~~, or a portion thereof ~~of a Protected Person~~:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected P~~p~~erson is actually paid under such insurance policy or claims fund~~but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses~~; or

   (b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

   ~~(c) is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity;~~ for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding Section 2(d),~~

   ~~(d)~~(c) ~~the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or~~

Commented [A1]: Updated wording from OPG with LSB minor edits for clarification.

~~any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilfulwillful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(e) to the extent arising from any circumstances in which a Protected Person did not reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. ~~In order to be entitled to indemnification hereunder in respect of any Losses, the~~Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the~~any~~ Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps ~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

~~A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.~~

Formatted: Font: Not Bold

Commented [A2]: Changes made to align with IESO indemnity

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any~~all~~ Losses in respect of a Claim will be ~~fully~~ indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or~~,~~ delayed~~, or conditioned~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~4.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, ~~with respect to directors, officers and employees of the Corporation~~ this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

Commented [A3]: Re-inserted as discussed.

~~5.~~7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty~~ ninety (9~~3~~0) days ~~of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested~~of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

~~6.~~8. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person~~, who is an individual,~~ whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's

Formatted: Highlight

activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person ~~who is an individual~~ is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.~~The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).~~

Formatted: Highlight

Commented [A4]: New wording of OPG

~~7.~~9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation)~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to~~), and subject to: bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally; to~~ the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;~~ to~~ section 11.3 of the *Financial Administration Act* (Ontario); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

Commented [A5]: I've made some changes to this section per internal discussions.

~~8.~~10. It is the intention of the Province to constitute the Corporation as trustee for the Protected ~~Parties~~ Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected ~~Parties~~Persons.

~~9.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~10.~~12. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year~~of June, 2017 ~~first above written~~.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault

Minister of Energy

DRAFT

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (other than financing entities as defined in the *Act)* and their respective directors, officers and employees.

Commented [HM1]: May come out depending on comments from OFA

Commented [HM2]: May come out depending on comments from OFA.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could, if it chose to, participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order

Draft

to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Commented [HM3]: Same comment as above – reference to the actual corporations may be removed depending on comments from OFA

OPG may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors,

officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities
- Market participants, program participants for issues in liquidity (e.g. short pay)
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities
- Securities commissions regulators (U.S./Canada)
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Commented [HM4]: May need to be updated.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and IESO's directors, officers and employees to increased liability.

Commented [HM5]: TBC

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of this element. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons (as defined in the Indemnities) with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any

such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or

duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Current insurance and indemnities both IESO and OPG provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently OPG maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to Section 2(a) of the Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity is not clear. However, the OPG Indemnity indicates that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language ensures that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

IESO – Insurance and Indemnities

IESO carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the

Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its subsidiaries, other than the financing entities themselves) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Commented [h6]: TBC

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity of OPG's directors/officers/employees as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG or its subsidiaries (not include the financing entities), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the ONFHP under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers and employees against any claims	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out their respective roles with respect to implementing the ONFHP.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporation itself.	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the ONFHP.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: FW: OPG/IESO indemnity Responses to OFA Questions
Date: Thursday, June 22, 2017 11:55:35 AM
Attachments: IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8_Comments vClea....docx

---

Hi Scott,

I thought you said that you had received this morning a draft package of the Energy s.28 submission request materials, is that right? Would you be able to send those to me? (E.g., revised indemnities, contingent liabilities table, business case, submission covering letter reflecting the responses as appropriate.)

What I received, through staff, was just the draft responses, as attached.

Thanks,
Ron

From: John Kim
Sent: June-22-17 09:36
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Fyi. Draft form and pending approval...according to Energy Legal.

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

IESO/OPG Indemnities

Ministry of Finance Questions

1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and which the indemnity is intended to cover?
    - You have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups?

OPG's Response: The Protected Persons could potentially be liable in several circumstances relating to the Fair Hydro Plan, including potential liability to:

(i) the underwriters/agents selling debt securities of the financing entities;

(ii) the purchasers of debt securities of the financing entities (both the initial purchasers and subsequent purchasers of the debt securities in the secondary markets);

(iii) counterparties to agreements (e.g., the trustee of a financing entity that is a trust, the IESO);

(iv) other stakeholders of OPG if OPG (or any subsidiary thereof) is liable for any claim or obligation; these stakeholders could include, for example, the Province, as shareholder of OPG, pensioners, and employees; and

(v) regulators (e.g., OSC).

This is not an exhaustive list of all potential liability. It has been included for illustrative purposes only.

IESO's Response: Some examples of activities giving rise to liability include the following:

- Investors in any Fair Hydro investments or underwriters and banks regarding the offering of the investment asset to investors: any securities prospectus or underwriting arrangements, with the IESO named and / or IESO being involved
- OPG (or Financing Entity) in relation to the commercial arrangements regarding transfer of regulatory asset and servicing of investment asset, and related activities
- Market participants, program participants for issues in liquidity – e.g. short pay
- taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities
- securities commissions regulators (US/Canada)
- parties who may challenge Fair Hydro Plan Act or any component of it and include the IESO as a party to such challenge

- in the case of an insolvency, Directors have statutory liability for payroll and taxes.

Are there situations where someone might not be acting in good faith and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?

ENERGY's Response: The purpose of the indemnity is to provide coverage to the Protected Persons for Losses other than those arising out of gross negligence, dishonesty, or willful misconduct. Also, while a Protected Person may have been acting in good faith, this does not stop an individual/entity from bringing a claim against that Protected Person on the grounds that they did not "act in good faith" The Indemnity is to cover an expenses/losses etc. associated with defending against any such claims (coverage to be provided before a judgment is made).

i. Request for Approval points out that *Electricity Act, 1998* already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The Fair Hydro Plan has similar language for OPG s. 39(1), but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?

ENERGY's Response: Section 39(1) was the result of ongoing discussions with OPG and the wording is what was agreed to by the Ministry and OPG. Further, the Ministry has made a commitment to OPG to provide an indemnity to its directors and officers.

ii. Has consideration been given to providing an indemnity to directors, officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)

ENERGY's Response: This is the scope of the indemnity that has been requested by OPG/IESO (respectively). We are waiting to hear back from OPCD to determine whether there are accounting grounds to push back on having the Indemnities cover the Corporations, and in the case of OPG, also the Corporation's subsidiaries.

- Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

IESO's Response:

- Additional processes are required to segregate the Fair Hydro flows (new charge types, new bank segregations, new input forms, new payment processing schedules).
- IESO may need to implement a separate process to receive and remit clean energy adjustments
- IESO will enter into commercial arrangements with the financing entity relating to the transfer of the regulatory asset, and to servicing arrangements relating to recovery of the clean energy adjustment.
- It is unclear at the moment what additional requirements OPG or the banks / underwriters may request.

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

ENERGY's Response: Yes, the scope of the work and who is covered under the indemnity will further be tailored to the specific circumstances of IESO/OPG. However, the general provisions making up most of the Indemnity would be the same for both as we would want to be providing OPG/IESO with similar type of rights under the Indemnity.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

ENERGY's Response: No, we do not think that this is too broad. The Province has previously provided OPG directors indemnities (s.28 approval granted) that indemnified directors "from and against any and all losses" – this wording would be broad enough to cover both loss of profits and loss of opportunity.

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

OPG's Response: OPG maintains Directors & Officers (D & O) Liability insurance with limits of USD $110M. The D&O liability insurance includes Personal Coverage (Side A) and Corporate Reimbursement Coverage (Side B) as follows:

Personal Coverage (Side A)

Under Personal Coverage (Side A), the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the Insured Person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such Insured Person. The full $110M limit is available for Side A coverage.

Corporate Reimbursement Coverage (Side B)

Under the Corporate Reimbursement Coverage (Side B), the policy reimburses the Company for losses incurred to indemnify an Insured Person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500K.

Directors and Officers have priority of payments over the Company for the entire $110M limit.

In addition, we note that pursuant to Section 2(a) of the draft Indemnity Agreement that a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

IESO Response: IESO carries:

- Directors & Officers insurance: max $15 million limit and $200,000 retention per claim. Employees are included in the definition of Individual Insureds.
- Professional liability: max $75 million limit.

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

OPG's Response: OPG has provided its directors (but not its officers or employees) with an indemnity.

IESO's Response: Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

OPG's Response: The test under the Securities Act (Ontario) is a reasonableness test. It is therefore certainly possible for a Protected Person to fail to meet the standard for the due diligence defence while not also committing gross negligence or wilful misconduct.

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided by the indemnity?

ENERGY's Response: The purpose of the indemnity is to provide indemnification to the Protected Persons (cover Persons to the extent of their losses that are covered under the indemnity (indemnity excludes losses related to the Protected Persons' gross negligence, wrongful misconduct, or dishonesty). The purpose of the waiver is to restrict the province's ability to bring any claims (other than those arising out of gross negligence and wilful misconduct) against the Protected Persons. OPG has specifically requested the waiver. They believe that because they are carrying out the Fair Hydro Plan activities at the request of the Province, they should be given this waiver in the indemnity. We believe the risk associated with providing this waiver is likely low given that it is unlikely that the Province would bring a claim against a Protected Person for acts they would be providing an indemnity to the Protected Person for.

8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

OPG's Response: One example arises if a financing entity is a trust. OPG directors/officers/employees will need to sign the prospectus/offering documents, but not in their capacities as those directors/officers/employees of OPG as the offering documents will not be offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as the Financial Services Manager of the financing entity.

9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?
    - What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
    - Or does SPV require an indemnity as well and why?
    - How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?

OPG's Response: OPG has clarified that it is not OPG's intention that the financing entities themselves be covered by this Indemnity Agreement. The Protected Persons would include

OPG and its subsidiaries that are not financing entities. Separate arrangements with the Province are being negotiated for the financing entities.

- Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

ENERGY's Response: We had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their respective corporation as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

OPCD is being consulted on whether there are accounting implications on extending the Indemnities to the Corporations and in the case of OPG, its subsidiaries. If there are accounting implications, ENERGY can take this back to OPG/IESO for further negotiation (i.e. to limit the indemnity to directors, officers and employees).

OPG's Response: OPG has indicated that they require an indemnity for the corporation and its subsidiaries for the following reason: as noted above in Question #1, OPG (and its subsidiaries) have potential liability to many stakeholders, including, for example, its pensioners. In approving OPG's participation in the Fair Hydro Plan, the OPG directors will want to know that these stakeholders are protected in the event that OPG or any of its subsidiaries is liable for a claim in relation to the Fair Hydro Plan. For example, if there is a large claim against OPG which could affect OPG's ability to make its pension contributions, the OPG directors will want to know that the indemnity agreement will protect OPG in this regard and allow OPG to make its pension contributions.

*** A response from IESO on this is pending. We will send to you once we receive it.*

10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

ENERGY's Response: No, the Cabinet decks and TB submissions in March did not reference the need for indemnity.

In the draft June TB submission, the document states that legislation includes… "scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking."

11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the

legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, would this potentially affect accounting?

OPG's Response: OPG acknowledges that the Electricity Act has been amended to contemplate that OPG's objects include those related to the Fair Hydro Plan. This was a technical amendment designed to ensure that OPG could, if it chose to, participate in the Fair Hydro Plan. However, the role that the Province has requested OPG carry out in connection with the Fair Hydro Plan is outside its typical business activities and corporate mandate relating to power generation and therefore OPG's directors will need the indemnity agreement in order to approve OPG's participation in the Fair Hydro Plan. The accounting criteria that enable OPG to consolidate the financing entity is based on the relevant activities of the financing entity, and who has the power to control those activities. It is not dependent on the legal form of the structure, as accounting looks beyond legal form to the 'substance' of the transaction.

IESO's Response: The Fair Hydro Plan is a new element of IESO's mandate that it is being asked to implement, and one that may create material risk to the IESO, and potentially its directors, officers and employees.

Generally, the IESO currently administers a net zero market where money in equals money out within the normal monthly cycle (in the case of the current RPP program, the cash flows are expected to net to zero every six months). The Fair Hydro program(s) provides where the IESO will be responsible to settle and potentially carry very large amounts over many years and the IESO may be embroiled with investors' responsibilities as OPG Trust sells to investors.

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously, the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?

OPG's Response: The Protected Persons need to be fully protected as a result of any claim connected to the Fair Hydro Plan. Having regard to this general principle, OPG would be happy to consider other drafting for this recital if desired by the Province.

ENERGY's Response: We note that the actual text of the indemnities state that indemnification would be triggered for certain losses/claims arising "as a result of the Corporation's, [any of the Corporation's subsidiaries in the case of OPG] and/or any such other Protected Person's *activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan*. In this way the indemnity is restricted to acts/omissions of a Protected Person in the implementation or relating to the Fair Hydro Plan rather than claims due to or resulting

from the Fair Hydro Plan in and of itself. However, we are happy to re-draft this provision to address OFA/MOF's concerns.

13. 9(c) – Should this also reference that certain remedies such as specific performance etc. not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

ENERGY's Response: We are open to putting this into the current draft before sending back to OPG/IESO for final review.

14. Contingent Liability chart may need to be made more consistent with business case.

ENERGY's Response: we can make those changes – could you please further specify what changes you are referring to?

15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

ENERGY's Response: ENERGY's allocation will not be able to support payments under the indemnity in the event that the contingent liability materialises. Should the payment be required, the Ministry will need to return to TB/MBC for an increase in its allocation. This would be under Vote/Item 2905 - 01.

As background, ENERGY only has control of about 2% of its allocation to deliver on its mandate and commitments (i.e., payroll, ODOEs and ad hoc transfer payments). The largest component of ENERGY's allocation is for the rate mitigation programs that are demand-driven entitlement programs. Spending is non-discretionary and the Ministry does not have control over this allocation.

From:	John Kim
To:	Ronald Kwan
Cc:	Malle Hanslep (MOF)
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Thursday, June 22, 2017 9:35:35 AM
Attachments:	IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8_Comments vClea....docx

Fyi. Draft form and pending approval…according to Energy Legal.

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

IESO/OPG Indemnities

Ministry of Finance Questions

1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and which the indemnity is intended to cover?
    - You have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups?

OPG's Response: The Protected Persons could potentially be liable in several circumstances relating to the Fair Hydro Plan, including potential liability to:

(i) the underwriters/agents selling debt securities of the financing entities;

(ii) the purchasers of debt securities of the financing entities (both the initial purchasers and subsequent purchasers of the debt securities in the secondary markets);

(iii) counterparties to agreements (e.g., the trustee of a financing entity that is a trust, the IESO);

(iv) other stakeholders of OPG if OPG (or any subsidiary thereof) is liable for any claim or obligation; these stakeholders could include, for example, the Province, as shareholder of OPG, pensioners, and employees; and

(v) regulators (e.g., OSC).

This is not an exhaustive list of all potential liability. It has been included for illustrative purposes only.

IESO's Response: Some examples of activities giving rise to liability include the following:

- Investors in any Fair Hydro investments or underwriters and banks regarding the offering of the investment asset to investors: any securities prospectus or underwriting arrangements, with the IESO named and / or IESO being involved
- OPG (or Financing Entity) in relation to the commercial arrangements regarding transfer of regulatory asset and servicing of investment asset, and related activities
- Market participants, program participants for issues in liquidity – e.g. short pay
- taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities
- securities commissions regulators (US/Canada)
- parties who may challenge Fair Hydro Plan Act or any component of it and include the IESO as a party to such challenge

- in the case of an insolvency, Directors have statutory liability for payroll and taxes.

Are there situations where someone might not be acting in good faith and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?

ENERGY's Response: The purpose of the indemnity is to provide coverage to the Protected Persons for Losses other than those arising out of gross negligence, dishonesty, or willful misconduct. Also, while a Protected Person may have been acting in good faith, this does not stop an individual/entity from bringing a claim against that Protected Person on the grounds that they did not "act in good faith" The Indemnity is to cover an expenses/losses etc. associated with defending against any such claims (coverage to be provided before a judgment is made).

i. Request for Approval points out that *Electricity Act, 1998* already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The Fair Hydro Plan has similar language for OPG s. 39(1), but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?

ENERGY's Response: Section 39(1) was the result of ongoing discussions with OPG and the wording is what was agreed to by the Ministry and OPG. Further, the Ministry has made a commitment to OPG to provide an indemnity to its directors and officers.

ii. Has consideration been given to providing an indemnity to directors, officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)

ENERGY's Response: This is the scope of the indemnity that has been requested by OPG/IESO (respectively). We are waiting to hear back from OPCD to determine whether there are accounting grounds to push back on having the Indemnities cover the Corporations, and in the case of OPG, also the Corporation's subsidiaries.

- Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

IESO's Response:

- Additional processes are required to segregate the Fair Hydro flows (new charge types, new bank segregations, new input forms, new payment processing schedules).
- IESO may need to implement a separate process to receive and remit clean energy adjustments
- IESO will enter into commercial arrangements with the financing entity relating to the transfer of the regulatory asset, and to servicing arrangements relating to recovery of the clean energy adjustment.
- It is unclear at the moment what additional requirements OPG or the banks / underwriters may request.

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

ENERGY's Response: Yes, the scope of the work and who is covered under the indemnity will further be tailored to the specific circumstances of IESO/OPG. However, the general provisions making up most of the Indemnity would be the same for both as we would want to be providing OPG/IESO with similar type of rights under the Indemnity.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

ENERGY's Response: No, we do not think that this is too broad. The Province has previously provided OPG directors indemnities (s.28 approval granted) that indemnified directors "from and against any and all losses" – this wording would be broad enough to cover both loss of profits and loss of opportunity.

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

OPG's Response: OPG maintains Directors & Officers (D & O) Liability insurance with limits of USD $110M. The D&O liability insurance includes Personal Coverage (Side A) and Corporate Reimbursement Coverage (Side B) as follows:

Personal Coverage (Side A)

Under Personal Coverage (Side A), the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the Insured Person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such Insured Person. The full $110M limit is available for Side A coverage.

Corporate Reimbursement Coverage (Side B)

Under the Corporate Reimbursement Coverage (Side B), the policy reimburses the Company for losses incurred to indemnify an Insured Person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500K.

Directors and Officers have priority of payments over the Company for the entire $110M limit.

In addition, we note that pursuant to Section 2(a) of the draft Indemnity Agreement that a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

IESO Response: IESO carries:

- Directors & Officers insurance: max $15 million limit and $200,000 retention per claim. Employees are included in the definition of Individual Insureds.
- Professional liability: max $75 million limit.

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

OPG's Response: OPG has provided its directors (but not its officers or employees) with an indemnity.

IESO's Response: Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

OPG's Response: The test under the Securities Act (Ontario) is a reasonableness test. It is therefore certainly possible for a Protected Person to fail to meet the standard for the due diligence defence while not also committing gross negligence or wilful misconduct.

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided by the indemnity?

ENERGY's Response: The purpose of the indemnity is to provide indemnification to the Protected Persons (cover Persons to the extent of their losses that are covered under the indemnity (indemnity excludes losses related to the Protected Persons' gross negligence, wrongful misconduct, or dishonesty). The purpose of the waiver is to restrict the province's ability to bring any claims (other than those arising out of gross negligence and wilful misconduct) against the Protected Persons. OPG has specifically requested the waiver. They believe that because they are carrying out the Fair Hydro Plan activities at the request of the Province, they should be given this waiver in the indemnity. We believe the risk associated with providing this waiver is likely low given that it is unlikely that the Province would bring a claim against a Protected Person for acts they would be providing an indemnity to the Protected Person for.

8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

OPG's Response: One example arises if a financing entity is a trust. OPG directors/officers/employees will need to sign the prospectus/offering documents, but not in their capacities as those directors/officers/employees of OPG as the offering documents will not be offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as the Financial Services Manager of the financing entity.

9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?
    - What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
    - Or does SPV require an indemnity as well and why?
    - How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?

OPG's Response: OPG has clarified that it is not OPG's intention that the financing entities themselves be covered by this Indemnity Agreement. The Protected Persons would include

OPG and its subsidiaries that are not financing entities. Separate arrangements with the Province are being negotiated for the financing entities.

- Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

ENERGY's Response: We had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their respective corporation as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

OPCD is being consulted on whether there are accounting implications on extending the Indemnities to the Corporations and in the case of OPG, its subsidiaries. If there are accounting implications, ENERGY can take this back to OPG/IESO for further negotiation (i.e. to limit the indemnity to directors, officers and employees).

OPG's Response: OPG has indicated that they require an indemnity for the corporation and its subsidiaries for the following reason: as noted above in Question #1, OPG (and its subsidiaries) have potential liability to many stakeholders, including, for example, its pensioners. In approving OPG's participation in the Fair Hydro Plan, the OPG directors will want to know that these stakeholders are protected in the event that OPG or any of its subsidiaries is liable for a claim in relation to the Fair Hydro Plan. For example, if there is a large claim against OPG which could affect OPG's ability to make its pension contributions, the OPG directors will want to know that the indemnity agreement will protect OPG in this regard and allow OPG to make its pension contributions.

*** A response from IESO on this is pending. We will send to you once we receive it.*

10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

ENERGY's Response: No, the Cabinet decks and TB submissions in March did not reference the need for indemnity.

In the draft June TB submission, the document states that legislation includes… "scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking."

11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the

legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, would this potentially affect accounting?

OPG's Response: OPG acknowledges that the Electricity Act has been amended to contemplate that OPG's objects include those related to the Fair Hydro Plan. This was a technical amendment designed to ensure that OPG could, if it chose to, participate in the Fair Hydro Plan. However, the role that the Province has requested OPG carry out in connection with the Fair Hydro Plan is outside its typical business activities and corporate mandate relating to power generation and therefore OPG's directors will need the indemnity agreement in order to approve OPG's participation in the Fair Hydro Plan. The accounting criteria that enable OPG to consolidate the financing entity is based on the relevant activities of the financing entity, and who has the power to control those activities. It is not dependent on the legal form of the structure, as accounting looks beyond legal form to the 'substance' of the transaction.

IESO's Response: The Fair Hydro Plan is a new element of IESO's mandate that it is being asked to implement, and one that may create material risk to the IESO, and potentially its directors, officers and employees.

Generally, the IESO currently administers a net zero market where money in equals money out within the normal monthly cycle (in the case of the current RPP program, the cash flows are expected to net to zero every six months). The Fair Hydro program(s) provides where the IESO will be responsible to settle and potentially carry very large amounts over many years and the IESO may be embroiled with investors' responsibilities as OPG Trust sells to investors.

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously, the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?

OPG's Response: The Protected Persons need to be fully protected as a result of any claim connected to the Fair Hydro Plan. Having regard to this general principle, OPG would be happy to consider other drafting for this recital if desired by the Province.

ENERGY's Response: We note that the actual text of the indemnities state that indemnification would be triggered for certain losses/claims arising "as a result of the Corporation's, [any of the Corporation's subsidiaries in the case of OPG] and/or any such other Protected Person's *activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan*. In this way the indemnity is restricted to acts/omissions of a Protected Person in the implementation or relating to the Fair Hydro Plan rather than claims due to or resulting

from the Fair Hydro Plan in and of itself. However, we are happy to re-draft this provision to address OFA/MOF's concerns.

13. 9(c) – Should this also reference that certain remedies such as specific performance etc. not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

ENERGY's Response: We are open to putting this into the current draft before sending back to OPG/IESO for final review.

14. Contingent Liability chart may need to be made more consistent with business case.

ENERGY's Response: we can make those changes – could you please further specify what changes you are referring to?

15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

ENERGY's Response: ENERGY's allocation will not be able to support payments under the indemnity in the event that the contingent liability materialises. Should the payment be required, the Ministry will need to return to TB/MBC for an increase in its allocation. This would be under Vote/Item 2905 - 01.

As background, ENERGY only has control of about 2% of its allocation to deliver on its mandate and commitments (i.e., payroll, ODOEs and ad hoc transfer payments). The largest component of ENERGY's allocation is for the rate mitigation programs that are demand-driven entitlement programs. Spending is non-discretionary and the Ministry does not have control over this allocation.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim; Gavin He
Subject:	FW: OPG/IESO indemnity Responses to OFA Questions
Date:	Wednesday, June 28, 2017 11:35:29 AM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v04_TPW Comments.docx

Hi Ron/John

There are a couple of final edits from Legal in attached, to clarify scope of the indemnity. I'm attaching for your review.

Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Wednesday, June 28, 2017 11:01 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached some more comments that I hope reflect the most recent discussions.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 28, 2017 9:08 AM
To: Hanslep, Malle (MOF)
Cc: He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Malle,

That paragraph was my attempt to summarize paragraphs 1 and 2 from the OPG Agreement. In particular 2 below. But I wasn't providing any value-added in terms of interpreting paragraph 2, and I wasn't making the connection to the waiver. I'm happy to take your advice on the wording.

> 2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or

she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 6:33 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

I reviewed the briefing note and have a question regarding the description of scope of indemnity in the first paragraph and on p. 2 – who the indemnity applies to. The complication is the activities of the OPG directors, officers and employees when they at the request of OPG undertake another activity in the implementation of the OFHP and in particular respecting OPG's role as Financial Services manager on behalf of the financing entity if it's a trust. This is explained on p. 8 of Energy's business case and of course is mentioned expressly in the OPG indemnity. It doesn't really seem that these individuals would be appointed as directors, officers and employees of the financing entity trust but it's possible. Maybe the language in these 2 paragraphs has been carefully written to cover these potential roles as it does mention "trustee" so that these individuals might be acting as a trustee of the financing entity in that case.

I wrote the below wording based on p. 8 so just send it for your consideration. I'm not sure if it's better or if you have specifically considered this point. I didn't mark up the note.
The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees. In the case of directors, officers and employees of OPG and its subsidiaries this could include where at the request of OPG, they undertake activities in another capacity in the implementation of the OFHP or OPG's role as Financial Services Manager of the financing entity, for example, signing documents on behalf of a financing entity that is a trust.

Also on p. 5 under Accounting Treatment, change MENE to Ministry of Energy.

Thank you.

Malle

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 5:18 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: He, Gavin (OFA)
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi

If you are still making edits to the briefing note you can send them along but for now, attached is a markup and clean version with Toby's edits, IESO agent references removed and a couple of other minor edits. We will have approval package for sign-off tomorrow.

Thanks
Bruno

From: Bruno Amara
Sent: Tuesday, June 27, 2017 4:35 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

HI Malle

Sorry, just to clarify, are you still providing comments/edits to Toby's copy, or was that your edit which we can make.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:11 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I don't' think the indemnity covers IESO agents any more based on the last draft I saw.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 4:10 PM
To: Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK, we have a couple of minor edits but will wait for your copy.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:08 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Yes I think I may have a few comments and will follow up using Toby's mark-up as a base.

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 3:48 PM
To: Bruno Amara
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno – I have made some further edits to the BN reflecting our discussion. Malle is still reviewing and may have some more comments.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 9:25 AM
To: Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks

Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are

no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>

> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>

> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.

>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,

>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their ~~respective~~ roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of OPG~~of the corporation~~ or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- IESO and OPG have stated that without these indemnities and waivers they will not be able to participate in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.

In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity, for example, signing documents on behalf of a financing entity that is a trust at the request of OPG or acting as directors, officers or employees of entities that are carved out of the Indemnity Agreement, where they are doing so in the implementation of the OFHP and are also a director, officer or employee of OPG or any of OPG's subsidiaries. ~~The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.~~

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected Persons in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity (though to the extent that the Protected Person makes a claim on an indemnity that creates a loss for another Protected Person, such as OPG and its subsidiaries and the IESO, such other Protected Person may make a claim under an Indemnity Agreement). The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Waiver of claim provision

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for willful misconduct, dishonesty or gross negligence.

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the

existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, (see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Formatted: Normal, Justified

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

~~MENE~~ The Minister of Energy had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are current being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the

rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

Formatted: Bullet Style, Left, None, Widow/Orphan control, Tab stops: Not at 1"

Formatted: Font: (Default) Arial

DESCRIPTION OF RISK AND RISK MITIGATION

The ONFHP is a novel program, and as a financing structure it is the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.
- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance, to the extent already paid under such insurance.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

Although there is a provision in the Indemnity Agreements that provides that a claim relating to the OFHP should initially be made on any indemnity that is already in place ~~by~~from the IESO or OPG for the benefit of their respective directors, officers or employees before making a claim on the Province's indemnity, if the IESO or OPG suffer a loss because they have indemnified such director, officer or employee they would ~~likely~~ be ~~eligible~~able to make a claim under an Indemnity Agreement. Thus, the Province would, to the extent such a claim was not covered by an insurance policy, be liable for such a loss of the IESO or OPG.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or

indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June XX, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	FW: OPG/IESO indemnity
Date:	Thursday, June 08, 2017 3:32:39 PM
Attachments:	IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8_Comments vClean.docx

Hi Scott,

FYI. Staff-level queries, including incorporating somewhat updated MOF Legal ones that I referred to on our call yesterday.

Ron

From: John Kim
Sent: June-08-17 15:24
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

Fyi.

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message,

including any attachments, without reading them, and destroy all copies. Thank you.

IESO/OPG Indemnities

Ministry of Finance Questions

1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and which the indemnity is intended to cover?
    - You have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups? Are there situations where someone might not be acting in good faith and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?
        i. Request for Approval points out that *Electricity Act, 1998* already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The Fair Hydro Plan has similar language for OPG s. 39(1), but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?
        ii. Has consideration been given to providing an indemnity to directors, officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)
    - Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided by the indemnity?

8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?
    - What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
    - Or does SPV require an indemnity as well and why?
    - How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?
    - Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, would this potentially affect accounting?

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously, the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?
13. 9(c) – Should this also reference that certain remedies such as specific performance etc not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

14. Contingent Liability chart may need to be made more consistent with business case.

15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

From:	John Kim
To:	Ronald Kwan
Subject:	FW: OPG/IESO indemnity
Date:	Thursday, June 08, 2017 3:23:55 PM
Attachments:	IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8_Comments vClean.docx

Fyi.

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF)

<Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list.

Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO/OPG Indemnities

Ministry of Finance Questions

1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and which the indemnity is intended to cover?
    - You have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups? Are there situations where someone might not be acting in good faith and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?
        i. Request for Approval points out that *Electricity Act, 1998* already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The Fair Hydro Plan has similar language for OPG s. 39(1), but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?
        ii. Has consideration been given to providing an indemnity to directors, officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)
    - Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided by the indemnity?

8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?
    - What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
    - Or does SPV require an indemnity as well and why?
    - How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?
    - Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, would this potentially affect accounting?

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously, the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?
13. 9(c) – Should this also reference that certain remedies such as specific performance etc not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

14. Contingent Liability chart may need to be made more consistent with business case.

15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

From: John Kim
To: Ronald Kwan
Subject: FW: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 10:25:48 AM

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara

Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Cc:	Gavin He
Subject:	FW: Outstanding Business Issues Ontario Fair Hydro Plan
Date:	Tuesday, May 30, 2017 7:43:54 PM
Attachments:	Outstanding Business Issues Ontario Fair Hydro Plan.docx

Hi,

Please review.

Thanks,
ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: May-30-17 6:13 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Outstanding Business Issues Ontario Fair Hydro Plan

Fyi – here is a document that we have pulled together for Thursday's discussion. I think Kaitlin has also shared with colleagues at OFA for review. I shared with John at OPG and he asked that we include a few bullets on the sub debt term sheet in development between OPG and OFA. We plan to add that in.

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. **Service and Performance 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 and 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:**
     - The Ministries of Finance, OFA and OPG are working together to determine required regulation changes
     - Timing: [TBD]

3. **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:**
    - 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.
    - 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
- There are two components to the model proposed by OPG:
    - Cost recovery: the structure will also allow for recovery of costs, subject to OEB's prudence review. OEB and OPG are in discussions in order to develop a model that is consistent with OEB's processes.
    - Performance management fee: OPG has the ability to over-earn or lose depending on its cost of funds for sr. debt relative to a benchmark. Any savings / costs would be shared equally between ratepayers and OPG to +/-$1M. Above or below $1M, all savings / costs flow to ratepayers.
- **Next Steps:**
    - OPG and OEB will bring forward a recommended framework for developing management fees
    - Timing: For incorporation into regulations being brought forward in June

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: FW: Policy question re OFHP Credit Facility Agreement
Date: Friday, August 04, 2017 3:42:18 PM

Fyi. In case you hear back on this….

From: John Kim
Sent: Friday, August 04, 2017 3:42 PM
To: William Tan <William.Tan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hi Lisa, William,

I am OK as long as the proposed approach is consistent with OFA's lending policy and practices. We have generally not opined on the details of the lending agreement, as we have been communicating.

I do want to copy Ken and Mike to ensure that they are onside, as well.

Thanks,

John

From: William Tan
Sent: Friday, August 04, 2017 3:24 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hello Bruno and John,

If you wish, I can arrange a call between legal and CEFD today.

From: Lisa Stein
Sent: Friday, August 04, 2017 2:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>

Subject: Policy question re OFHP Credit Facility Agreement
Importance: High

Hi Bruno and John,

I have some additional information pertaining to the structure of the OFA loan to IESO re: OFHP. While this information adds context, it doesn't address the policy question of whether an unsecured loan is appropriate (based on the extent of the insolvency risk) for this regulatory asset.

The current draft FHP Credit Facility Agreement is consistent with the OFA Lending Policy (last revised and approved April 16, 2010 – *status TBC*), which provides that except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, the OFA will generally lend on an unsecured basis (apart from the intercept provision) in respect of loans made by the OFA to public bodies (IESO is a public body for the purposes of CIPA). As such, the structure of this loan is consistent with the Policy (subject to my note below re: intercept provision). In my review of the supporting policy documentation, including the LRC minute, I didn't see any reference to a secured lending structure and I don't believe that there is any direction requiring this to be a secured loan. That being said, I query whether OFA CEFD staff are comfortable with this approach (see below).

In terms of the intercept provisions, which are required pursuant to s. 23 of CIPA, I have asked Toby from MOF Legal if they are aware of any agreement between the Ministry of Energy and the IESO agreeing that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the IESO amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this loan agreement (as required by CIPA)? Are you aware of any such agreement? However, even if there were such an agreement in place, it is unclear to whether adding intercept provisions to the credit facility agreement, will provide further comfort. I plan to discuss this matter further with MOF Legal.

Based on the foregoing (and pending any additional information that Toby may obtain from his discussions with the Ministry of Energy), I defer the following question to CEFD staff:

> **Are you comfortable with the current structure of this loan as an unsecured loan (and the risk that this may entail)?** This decision ultimately needs to be made by business/policy people.
>
> - **If yes,** the next draft of the agreement will be available in the next day or so to send to IESO for review. I will work with MOF Legal to draft/leverage intercept provisions to mitigate this risk (as far as possible, based on the foregoing). We are also working on the permitted liens, *pari passu* and negative pledge provisions of the draft agreement, as previously discussed.
>
> - **If no,** additional Ministerial/TB direction, and a new legal agreement (likely with the assistance of external legal counsel) will be required. This will take additional time.

Please do not hesitate to contact me if you would like to discuss further.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Bruno Amara
To: Ronald Kwan; John Kim
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Date: Friday, August 11, 2017 4:08:32 PM

Hi Ron, John

I met with OFA Legal and Documentation on these ongoing discussions regarding the IESO/OFA credit facility. At this point in order to move this forward, a directive is required from the Minister exempting the intercept provision with respect to the $2B facility. This is because the OFA lending policy requires that unsecured loans have an intercept provision, which allows the Minister to deduct from a public bodies appropriation owing amounts. There is no appropriation for IESO, so this provision, is not required. They are looking to EFB to draft the directive and supporting briefing note. We are a bit short on resources, but I can assign someone to this next week, and I'm sure we can get input from both documentation and OFA Legal on this.

The Minister is away until September. Documentation will communicate with IESO on timing and process issues. Until September IESO will use the $975M facility. It is expected that by September there will be another draw taking IESO draw from $250M to $503M. There will need to be a process to move the draw from one facility to another. I don't think we are involved in that.

Bruno

From: Sarah Harris
Sent: Friday, August 11, 2017 9:35 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Thanks for clarifying the approach on this matter.

Based on this, we will not be seeking a security interest in the Regulatory Asset and will be seeking a directive ASAP for an exemption from inclusion of the intercept provision in the $2B FHP facility. We will inform IESO that current $975 million facility will be used for funding draws until such time as we are able execute the new $2B FHP facility.

Thanks,
Sarah

From: Ken Kandeepan
Sent: Thursday, August 10, 2017 5:12 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Sarah

Thanks for clear detailed email with good questions, however, instead of responding to each of the questions, I am going back to my earlier premise that none of the loans currently on the OFA loan book have any kind of security attached to them. A good example is the current line of credit extended to the IESO for $975 million. Given this I am very reluctant to impose a security requirement the proposed $2 billion facility to the IESO from the Province.

I understand that the security requirement which is part of the OFA lending policy can waived with ministerial approval, I suggest that it be obtained as soon as possible. If there are delays in obtaining this approval, especially since the minister will be on vacation from the end of this week onwards, I also suggest, if possible the previous facility of $975 million continue until the new facility is in place. This will allow IESO to fund any regulatory assets created in the intervening period.

I have discussed my proposed approach with Gadi, who is supportive.

Thanks

Ken k

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will

need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

The steps of the transaction would be:

1 – The IESO makes payments to electricity producers at the contracted rate, but charges consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;
3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
4 – The IESO repays the OFA for the loan.

Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

> *"Dear Anthony,*
>
> *My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?*
>
> - *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
> - *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
> - *[Include additional questions]*
>
> *I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.*
>
> *Best regards,"*

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to

re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

Hi Sarah

Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.

But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be problematic for OFHP?

I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset.
Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.

Bruno

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:58 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris

Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call

yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Date: Friday, August 11, 2017 9:36:55 AM

Hi Ron, fyi

From: Sarah Harris
Sent: Friday, August 11, 2017 9:35 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Thanks for clarifying the approach on this matter.

Based on this, we will not be seeking a security interest in the Regulatory Asset and will be seeking a directive ASAP for an exemption from inclusion of the intercept provision in the $2B FHP facility. We will inform IESO that current $975 million facility will be used for funding draws until such time as we are able execute the new $2B FHP facility.

Thanks,
Sarah

From: Ken Kandeepan
Sent: Thursday, August 10, 2017 5:12 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Sarah

Thanks for clear detailed email with good questions, however, instead of responding to each of the questions, I am going back to my earlier premise that none of the loans currently on the OFA loan book have any kind of security attached to them. A good example is the current line of credit extended to the IESO for $975 million. Given this I am very reluctant to impose a security

requirement the proposed $2 billion facility to the IESO from the Province.

I understand that the security requirement which is part of the OFA lending policy can waived with ministerial approval, I suggest that it be obtained as soon as possible. If there are delays in obtaining this approval, especially since the minister will be on vacation from the end of this week onwards, I also suggest, if possible the previous facility of $975 million continue until the new facility is in place. This will allow IESO to fund any regulatory assets created in the intervening period.

I have discussed my proposed approach with Gadi, who is supportive.

Thanks

Ken k

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

> The steps of the transaction would be:
>
> 1 – The IESO makes payments to electricity producers at the contracted rate, but charges consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
> 2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;

3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
4 – The IESO repays the OFA for the loan.

Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

"Dear Anthony,

My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?

- *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
- *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
- *[Include additional questions]*

I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.

Best regards,"

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept

provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Sarah
>
> Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.
>
> But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be problematic for OFHP?
>
> I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset.

Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.

Bruno

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:58 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.

As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be

addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create

credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Date: Thursday, August 10, 2017 5:22:38 PM

Hi Ron

For your information.

Bruno

From: Ken Kandeepan
Sent: Thursday, August 10, 2017 5:12 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Sarah

Thanks for clear detailed email with good questions, however, instead of responding to each of the questions, I am going back to my earlier premise that none of the loans currently on the OFA loan book have any kind of security attached to them. A good example is the current line of credit extended to the IESO for $975 million. Given this I am very reluctant to impose a security requirement the proposed $2 billion facility to the IESO from the Province.

I understand that the security requirement which is part of the OFA lending policy can waived with ministerial approval, I suggest that it be obtained as soon as possible. If there are delays in obtaining this approval, especially since the minister will be on vacation from the end of this week onwards, I also suggest, if possible the previous facility of $975 million continue until the new facility is in place. This will allow IESO to fund any regulatory assets created in the intervening period.

I have discussed my proposed approach with Gadi, who is supportive.

Thanks

Ken k

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning

<Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

The steps of the transaction would be:

1 – The IESO makes payments to electricity producers at the contracted rate, but charges consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;
3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
4 – The IESO repays the OFA for the loan.

Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

"Dear Anthony,

My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?

- *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
- *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
- *[Include additional questions]*

I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.

Best regards,"

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Sarah
>
> Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.
>
> But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be problematic for OFHP?
>
> I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset.
> Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.
>
> Bruno
>
> ---
>
> **From:** Lisa Stein
> **Sent:** Wednesday, August 09, 2017 10:58 AM
> **To:** Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
> **Subject:** RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a

result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Bruno Amara
To:	Ronald Kwan
Subject:	FW: Policy questions re OFHP Credit Facility Agreement
Date:	Wednesday, August 09, 2017 11:27:40 AM
Attachments:	Re Policy question re OFHP Credit Facility Agreement .msg
Importance:	High

Hi Ron

The emails below are in regard to the OFA / IESO lending agreement (and to emails from last week). The agreement is near final, but got hung up last week on a discussion of the $2B facility being unsecured (as are other loans) and whether this loan should be treated as all others.

Sarah Harris (Documentation is asking us to opine). My non-expert reaction was that it would be treated as other loans – as Ken suggests below. However, MoF Legal (Toby Whitfield) raises questions (below) which I'm not in a position to answer.

We have an internal call at 2pm today to discuss. Per John's reply to Documentation (Will Tan) last week, I'm inclined to support the current draft based on Ken's advice. But I want to check with you first in case you have other thoughts.

Happy to discuss.

Thanks
Bruno

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the*

loans currently in the OFA's loan book.

As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

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

Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be

"warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim []
To: Ronald Kwan [Ronald.Kwan@ofina.on.ca]
CC: Bruno Amara [Bruno.Amara@ofina.on.ca]
Subject: Re: Policy question re OFHP Credit Facility Agreement
Date: Friday, August 04, 2017 17:20:22

I don't believe there is any risk more material than usual and as for the provision for the draw. This is the govt policy and ofa is supporting per its normal policy.

Sent from my iPhone

On Aug 4, 2017, at 3:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> Is it fair to say that the earlier IESO (and original OPA) credit facility was unsecured because the OPA (and IESO) had access to the rate base for the items that the facility was bridging for (e.g., RPP)?
>
> The issue here might be that the timing of the sale of the regulatory asset is subject to some uncertainty, and that access to the ratebase is deferred for a few years.
>
> Is there any suggestion of a risk of a provision being required to be taken against draws? Under normal circumstances, of course, this is supposed to be a revolving and short-term facility – fair to say?
>
> Ron
>
> **From:** John Kim
> **Sent:** August-04-17 15:42
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** FW: Policy question re OFHP Credit Facility Agreement

Fyi. In case you hear back on this….

From: John Kim
Sent: Friday, August 04, 2017 3:42 PM
To: William Tan <William.Tan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hi Lisa, William,

I am OK as long as the proposed approach is consistent with OFA's lending policy and practices. We have generally not opined on the details of the lending agreement, as we have been communicating.

I do want to copy Ken and Mike to ensure that they are onside, as well.

Thanks,

John

From: William Tan
Sent: Friday, August 04, 2017 3:24 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre

<Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hello Bruno and John,

If you wish, I can arrange a call between legal and CEFD today.

From: Lisa Stein
Sent: Friday, August 04, 2017 2:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>
Subject: Policy question re OFHP Credit Facility Agreement
Importance: High

Hi Bruno and John,

I have some additional information pertaining to the structure of the OFA loan to IESO re: OFHP. While this information adds context, it doesn't address the policy question of whether an unsecured loan is appropriate (based on the extent of the insolvency risk) for this regulatory asset.

The current draft FHP Credit Facility Agreement is consistent with the OFA Lending Policy (last revised and approved April 16, 2010 – *status TBC*), which provides that except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, the OFA will generally lend on an unsecured basis (apart from the intercept provision) in respect of loans made by the OFA to public bodies (IESO is a public body for the purposes of CIPA). As such, the structure of this loan is consistent with the Policy (subject to my note below re: intercept provision). In my review of the supporting policy documentation, including the LRC minute, I didn't see any reference to a secured lending structure and I don't believe that there is any

direction requiring this to be a secured loan. That being said, I query whether OFA CEFD staff are comfortable with this approach (see below).

In terms of the intercept provisions, which are required pursuant to s. 23 of CIPA, I have asked Toby from MOF Legal if they are aware of any agreement between the Ministry of Energy and the IESO agreeing that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the IESO amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this loan agreement (as required by CIPA)? Are you aware of any such agreement? However, even if there were such an agreement in place, it is unclear to whether adding intercept provisions to the credit facility agreement, will provide further comfort. I plan to discuss this matter further with MOF Legal.

Based on the foregoing (and pending any additional information that Toby may obtain from his discussions with the Ministry of Energy), I defer the following question to CEFD staff:

Are you comfortable with the current structure of this loan as an unsecured loan (and the risk that this may entail)? This decision ultimately needs to be made by business/policy people.

•□□□□□□□□ **If yes,** the next draft of the agreement will be available in the next day or so to send to IESO for review. I will work with MOF Legal to draft/leverage intercept provisions to mitigate this risk (as far as possible, based on the foregoing). We are also working on the permitted liens, *pari passu* and negative pledge provisions of the draft agreement, as previously discussed.

•□□□□□□□□ **If no,** additional Ministerial/TB direction, and a new legal agreement (likely with the assistance of external legal counsel) will be required. This will take additional time.

Please do not hesitate to contact me if you would like to discuss further.

Thank you,

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

From:	Bruno Amara
To:	Ronald Kwan; John Kim
Subject:	FW: Policy questions re OFHP Credit Facility Agreement
Date:	Friday, August 11, 2017 4:09:06 PM
Attachments:	OFA Lending Policy Final (April 16 2010).pdf

Fyi, attached is the OFA Lending policy

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

The steps of the transaction would be:

1 – The IESO makes payments to electricity producers at the contracted rate, but charges consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;
3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
4 – The IESO repays the OFA for the loan.

Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it

creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

"Dear Anthony,

My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?

- *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
- *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
- *[Include additional questions]*

I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.

Best regards,"

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Sarah
>
> Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.
>
> But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be problematic for OFHP?
>
> I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset.
> Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.
>
> Bruno

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:58 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.

Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?

- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

OFA LENDING POLICY

Approved:	**April 11, 2008**
Revised and approved:	**April 16, 2010**

SCOPE

The Ontario Financing Authority (OFA) is a crown corporation that has the statutory authority to lend to public bodies under the *Capital Investment Plan Act (CIPA).*

Public bodies are defined in CIPA as Crown agencies, hospitals and any other facilities receiving capital funding from the Minister of Health and Long-Term Care, municipalities, universities that receive operating funds from the Province, colleges of applied arts and technology, school boards, and any other entity named or described as a public body in the regulations which as of this date include the Deposit Insurance Corporation of Ontario, the Ontario Pension Benefits Guarantee Fund and the Law Society of Upper Canada and the Ontario Power Authority.

This policy addresses lending activities to public bodies undertaken where the OFA is acting as an intermediary on behalf of the Province.

AMENDMENTS

This policy replaces the OFA lending policy that was approved by the OFA Board of Directors on April 11, 2008.

Any amendments or exceptions to this policy must be approved by the OFA Board of Directors.

POLICY FRAMEWORK

On June 21, 2007, the government approved a new framework for financing public bodies that are consolidated on the Province's financial statements. Consolidated public bodies include school boards, colleges, hospitals and corporations, boards and commissions.

Generally, the policy framework mandates the OFA to provide long-term financing for capital purposes to school boards, colleges and hospitals, as well as to Provincial corporations, boards and commissions who borrow as agents of the Crown, where the financing is recommended by the responsible ministry.

The policy framework also mandates the OFA to charge a cost recovery rate for all loans to public bodies, and a proxy commercial rate where the project is deemed to be commercial in nature. Determinations as to the nature of the project are to be made by the OFA in consultation with the recommending ministry.

TYPE OF FINANCING

The policy framework mandates the OFA to provide long-term financing to public bodies, which will be undertaken on a fixed rate or variable rate basis. Except where the Minister of Finance, Treasury Board or Cabinet determines there is a significant benefit to the public body or to the Province, the OFA will not provide:

1. Short-term financing for operating or working capital purposes.

2. Construction financing where capital projects require significant project monitoring expertise to keep construction running on time and on budget.

3. Financing to consolidated corporations, boards and commissions that are not Crown agents.

LOAN APPROVALS

1. The OFA will only advance a loan to a public body where the Minister of Finance, Treasury Board or Cabinet expressly directs or approves the OFA to advance a loan to a public body.

2. Where the Minister of Finance, Treasury Board or Cabinet expressly directs or approves the OFA to advance a loan to a public body, no further Board approval is required.

3. The OFA Board shall annually review a borrowing and on-lending plan (the OFA's Annual Borrowing and On-Lending Plan), which shall include the OFA's annual borrowing requirements from the Province and projected on-lending activities to Ontario public bodies for the year. As part of its review, the OFA Board shall approve the OFA's cost recovery spread and proxy commercial interest rate spreads related to the OFA's annual lending activities to public bodies.

4. The OFA Board will be advised at its next regularly scheduled meeting of any deviations from the OFA's Annual Borrowing and On-Lending Plan.

LENDING DIRECTIVE

The OFA will prepare an annual lending directive for the Minister of Finance's consideration based on the proposed loans in the OFA's Annual Borrowing and On-Lending Plan which require consent under Section 28 of the *Financial Administration Act* ("FAA") or which are to be made to School Boards. The lending directive will expressly direct or approve the OFA to advance these loans to public bodies for the fiscal year. The lending directive will include the maximum authorized amount of the loans to individual borrowers or the maximum amount of all the loans to a group of borrowers, such as School Boards or Community Colleges, and where possible, the borrower's name and the specific purpose(s) for which the loans are required, with the other terms and

conditions of the loans being delegated to the CEO of the OFA or the Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA, or a person designated by either of them for approval.

The OFA will prepare specific lending directives for consideration by Minister of Finance for proposed loans in the the OFA's Annual Borrowing and On-Lending Plan which do not require consent under Section 28 of the FAA, other than loans to School Boards, at the time that the requests for the OFA to enter into such loans are being processed.

CONDITIONS PRECEDENT

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will:

1. Receive and review the public body's loan request as submitted and recommended by the responsible ministry.

2. Determine the public body's ability to repay the loan by relying on information submitted by the responsible ministry and public body, which may include information on the capital project, business case, cash flow projections and audited financial statements, and such other information as may be required.

3. Where required, ensure that the responsible ministry or public body has obtained prior written approval for the proposed loan pursuant to Section 28 of the FAA. The CEO of the OFA will not act as the delegate of the Minister of Finance to provide approval under Section 28 of the FAA for a loan when the OFA is the lender.

4. Evaluate the underlying risk of the project in order to determine if the project is commercial in nature, and if so establish an appropriate proxy commercial basis points spread to charge the public body as approved by the OFA Board (see "Proxy Commercial Rate").

5. Enter into a loan agreement with the public body containing terms and conditions consistent with the lending directive and satisfactory to the CEO of the OFA or the Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA, or a person designated by either of them , including appropriate (i) positive and negative covenants of the public body, (ii) representations and warranties by the public body, (iii) conditions precedent, (iv) remedies upon default provisions, (v) reporting provisions, (vi) event of default provisions, and (vii) intercept provisions.

6. Ensure that it has an appropriate intercept in place for the loan (see "Intercept").

SECURITY

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, the OFA will generally lend on an unsecured basis (apart from the intercept provision, as provided below) in respect of loans made by the OFA to public bodies.

INTERCEPT

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet:

1. Pursuant to section 23 of the *Capital investment Plan Act* and prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

2. Prior to recommending to the Minister of Finance that the intercept be exercised, the OFA will raise the issue with the responsible ministry and seek the ministry's support in getting the public body to pay the amounts owing within a reasonable cure period.

3. Should the public body not cure the default within a reasonable period of time, the OFA will give written notice to the Minister of Finance, with a copy to the responsible ministry, of a public body's failure to pay under its loan agreement and requesting the deduction of amounts equal to the amounts that a public body has failed to pay under its loan agreement.

4. Prior to any loan agreement entered into between the OFA and a public body, the responsible ministry is to covenant and agree that, upon receipt of notice from the OFA that a public body has failed to pay in accordance with the provisions of its loan agreement, the responsible ministry will provide all information requested by the OFA respecting amounts appropriated by the Legislature for payment to the public body including the intended purpose and expected timing of such payments to be made by the responsible ministry. Upon request, the responsible ministry agrees to provide similar information to the Minister of Finance.

5. Prior to any loan agreement entered into between the OFA and a public body, the responsible ministry is to acknowledge and agree 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 to the public body, the responsible ministry will take all necessary action required by it in order to effect such deduction in accordance with the Minister of Finance's direction and pay the amount to the OFA at the time specified.

COST RECOVERY

1. The OFA will recover its lending costs by charging public bodies a rate equal to the **Province's total cost of funds**, which will include the Province's direct borrowing costs (including commissions) as well as a spread to cover all costs related to the upfront and ongoing loan monitoring and administration of the OFA's lending activities.

2. The OFA will use a **basis-points-spread (bps) based cost recovery methodology** to recover the costs of its direct borrowing and on-lending activities. The costs relate to both the upfront and ongoing loan monitoring and administration and are expressed in terms of basis points per annum and will be recovered over the term of the loan.

3. The annual basis-point spread charged to public bodies for cost recovery shall be approved by the OFA Board and included in the OFA's Annual Borrowing and On-Lending Plan. The Capital Markets Treasury Division of the OFA, with the assistance of Internal Audit, will conduct an annual review to ensure that the cost recovery methodology is appropriate and that there are no significant under/over- recoveries that may require management's corrective action.

PROXY COMMERCIAL RATE

1. In addition to charging the Province's total cost of funds, the OFA will charge a proxy commercial basis points spread for projects that are commercial in nature in order to better reflect the costs of the underlying risk for financing of such projects. The proxy commercial basis points spread will be added to the Province's total cost of funds and recovered over the term of the loan. Loans are deemed to be commercial in nature where generally less than 50% of the operating revenues generated by the underlying project are attributable to government sources.

2. The methodology for determining proxy commercial basis points spreads (including the amount(s) of these spreads) charged to public bodies for projects deemed commercial in nature shall be approved by the OFA Board and included in the OFA's Annual Borrowing and On-Lending Plan. Proxy commercial basis points spreads will also be re-evaluated (and, if deemed necessary, reset upon approval of the OFA Board) in situations where there are significant changes to fixed income credit spreads. The OFA Corporate Finance Branch is responsible for recommending any changes to the

methodology or spread resets to the OFA Board, while the Capital Markets Division is responsible for informing the Corporate Finance Branch of any significant changes to fixed income credit spreads.

REPORTING REQUIREMENTS

1. A report outlining the status of all outstanding loans will be tabled with the OFA Board annually (the OFA's Annual Borrowing and On-Lending Plan) and at such other times as the OFA Board requests.

2. For each loan outstanding, such report will identify: the borrower, the purpose of the loan, the principal amount outstanding, and such other information as the OFA Board may request.

3. All OFA loans to public bodies will continue to be annually reported in the notes to the OFA's audited financial statements as disclosed in the OFA's Annual Report.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He; Shajee Kathirgamanathan; Bruno Amara
Subject:	FW: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program
Date:	Tuesday, November 28, 2017 11:09:28 AM

Fyi.

From: Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
Sent: Tuesday, November 28, 2017 10:12 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

FYI

From: Talwar, Shruti (ENERGY)
Sent: November 28, 2017 10:10 AM
To: 'RYFA Ken -TREASURY'; Manning, Mike (OFA); Kandeepan, Ken (OFA)
Cc: LEE John -TREASURY; GRECO Clara -LAWDIV; LADAK Lubna -TREASURY; GO Matthew -TREASURY; LIU Sheen -TREASURY; WONG Leslie -LAWDIV; Thouin, Alena (ENERGY); Sawwaf, Khareem (ENERGY); Sud, Manu (ENERGY); Young, Graham (ENERGY)
Subject: RE: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Ken R.,

Thanks for your email, and the chat last Friday morning to clarify the proposed process for the first transaction. As you know it is important to Ministry to ensure that we follow the proper process at all times, particularly for the first transaction. Here is the proposed process as I understand it from our chat.

1) IESO asset to be transferred is the balance as of November 30. I understand the projected balance is ~$1.2B of which 44 per cent which will covered by the request for the equity injection.
2) On Dec 7 or 8, IESO will get confirmation of the November 30 balance and relay to OPG
3) On Dec 7 or 8, OPG to send Ministry of Energy an unofficial, unsigned Transfer Notice indicating the balance, and the amount requested for equity injection along with the Share Subscription form. This notice will be missing the closing date but all other information will be complete and accurate.
4) Ministry of Energy to commence reviewing the request on the assumption that a formal signed Transfer notice will be provided between Dec 12 –15.
5) Ministry of Energy to make formal request to the OFA under an MOU, once the formal signed Transfer Notice is received by the Ministry from OPG. Only once the formal signed Transfer Notice is received by the Ministry of Energy from OPG, will the 5 day period starts, but we will endeavour to expedite, although only 2 of the 5 days are under our control.
6) OFA staff to process the payment within three business days as per the terms

of the MOU and wire funds to the appropriate account as per the MOU

From a Ministry of Energy perspective, we are ok with the above approach for this transaction. Our main concern, legal and policy, is ensuring that we have the formal signed Transfer Notice in hand before making any request to the OFA.

I understand that the closing date of the equity injection is the same as the closing date for the external financing which makes it challenging to provide the formal Transfer Notice within the 5 days. Going forward, you mentioned the warehousing facility may help with this timing issue.

Mike M and Ken K may have additional comments from an OFA perspective.
Shruti

Shruti Talwar
Director, Strategic Policy and Analytics Branch
Strategic, Network and Agency Policy Division
Ontario Ministry of Energy
416.325-8698
shruti.talwar@ontario.ca

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: November 23, 2017 1:26 PM
To: Talwar, Shruti (ENERGY); Manning, Mike (OFA); Kandeepan, Ken (OFA)
Cc: LEE John -TREASURY; GRECO Clara -LAWDIV; LADAK Lubna -TREASURY; GO Matthew -TREASURY; LIU Sheen -TREASURY; WONG Leslie -LAWDIV
Subject: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Shruti / Mike / Ken K,
Just wanted to give you a preliminary notice of expected funding requirements over the next month to facilitate the first purchase of the asset from the IESO and corresponding debt issued by the Trust, a part of which is supported by the equity injection from the Province. A formal notice will be provided in accordance with the relevant processes but given that this is the first transaction during a month when many people are away then we are providing this preliminary notice to help with lining up the relevant approvals.

The timing of the asset purchase will correspond to the debt issuance by the Trust. The exact timing will depend on completing the items required to market to investors – program documents and credit rating are the key elements.

In terms of dollar amount we anticipate the Trust purchasing the entire variance account balance. This is expected to be about $1.2 billion. As of the end of October, the account is just over $1

billion. It is expected that the senior debt for this first transaction will be both term debt and warehouse debt.

Since this is the first transaction in this structure and there are a number of moving parts at the current time then we will need to have some flexibility on the 5 business day requirement between notification and funding. One of the challenges is to include the Transfer Notice as part of the request for the equity since there is a similar 5 business day notice requirement. We may need to issue the equity request without the Transfer Notice attachment which would follow shortly after.

At the current time the expected dates are:
Pricing of term debt issuance – current target is sometime between Dec 12 to 15
Closing of debt issuance – Dec 19 to 22 (standard for securitization is T+5)

Closing date would correspond to the date for OPG to issue Class A shares to the Province in exchange for the corresponding funding from the Province.
Thanks,
Ken R

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Subject:	FW: Quick chat...
Date:	Wednesday, June 14, 2017 10:47:47 AM

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,

Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: FW: Quick chat...
Date: Wednesday, June 14, 2017 10:38:28 AM

Hi,

Please draft a few bullets.

Thanks,
Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Ronald Kwan
To: Malle Hanslep (MOF); John Kim
Subject: FW: Quick chat...
Date: Thursday, June 22, 2017 5:08:50 PM

Hi Malle, John,

Just a heads up that there has been additional MO-to-MO outreach on this.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-22-17 17:04
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Saad Baig (MOI-MTO) <Saad.Baig@ontario.ca>; Elizabeth Mendes (MOF) <Elizabeth.Mendes@ontario.ca>
Subject: FW: Quick chat...

Wondering how things have moved since the update last week.

FYI – I'm out of the office tomorrow. Saad is my back up.

From: Teliszewsky, Andrew (ENERGY)
Sent: June-22-17 4:48 PM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: Re: Quick chat...

Good Afternoon:

Wondering if we could circle back on this, please - this is becoming urgent and wondering if we can get confirmation of S.28 concurrence before Cabinet next week?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Wednesday, June 14, 2017 2:21 PM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Carys,

Unfortunately I am in Major projects at 11:30am and in a meeting with the Minister at 2pm.

Marianne is available at 11:30am if that works.

Thanks,
Liz

From: Baker, Carys (ENERGY)
Sent: June-14-17 10:35 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Liz,

This afternoon won't work but how about tomorrow at 11:30am or 2pm or Friday between 8-10am?

Thanks!

Carys

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From:	John Kim
To:	Ronald Kwan
Subject:	FW: Revised IESO Directive
Date:	Friday, August 18, 2017 10:47:31 AM
Attachments:	DIRECTIVE Aug 16.docx
Importance:	High

Fyi.

From: John Kim
Sent: Friday, August 18, 2017 10:46 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: Lisa Stein
Sent: Friday, August 18, 2017 10:39 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: Revised IESO Directive
Importance: High

Hi Malle,

I've amended the directive to incorporate the original IESO credit facility agreement. Due to the evolution of the agreement (ie. numerous amendments and transition from the OPA to the IESO, I also thought it would be helpful to include background on this credit facility in the recitals. I would appreciate your feedback on this revised directive, as it is now more complex.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, and December 18th, 2013, the Minister approved and directed the OFA to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

Commented [LS1]: Program area please confirm accuracy of directives.

Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Commented [LS2]: Amended as per Malle's comments. Program area please confirm.

DRAFT

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

Charles Sousa

Minister of Finance

DRAFT

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He
Subject:	FW: fhp credit facility agreement execution version v3 blackline.docx
Date:	Wednesday, October 25, 2017 12:23:36 PM
Attachments:	fhp credit facility agreement execution version v3 blackline.docx

Fyi, I believe this is the latest. We don't usually get involved in the facility drafting.

From: Lisa Stein
Sent: Monday, October 23, 2017 10:19 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: fhp credit facility agreement execution version v3 blackline.docx

Hi Will,

Please find attached a revised black-lined version of the FHP credit facility agreement. The only change from the last version is the addition of an "entire agreement" clause in section 7.8, as discussed at our internal meeting last week. Please send this amendment to the IESO (and re-format the accompanying draft clean execution version as necessary).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: September ___, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the ____ day of September 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", "hereor', "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.

"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*.

"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.~~any Lien arising from the IESO's role and obligations under the OFHP, including with respect to any amounts collected and held by IESO in relation to the Clean~~

Formatted: Font: Times New Roman, 12 pt

~~Energy Adjustment, or any other lien, whether arising from the action or inaction of IESO, that is created under 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.

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 subections 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 Payment 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 mature 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 reimbursement 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.l (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

Formatted: Font: Times New Roman, 12 pt

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

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.

Formatted: List Paragraph, Indent: Left: 0.75", First line: 0"

Formatted: Not Highlight

Formatted: Font: Times New Roman, 12 pt

Formatted: List Paragraph, Indent: Left: 0.75", First line: 0"

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 the Minister of Finance is entitled to deduct from monies appropriated by the Legislature for payment to the IESO ("**Appropriated Funds**"), amounts equal to any amounts that the IESO fails to pay under this Agreement. On the occurrence of an Event of Default, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO fails 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 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, of the IESO's failure to pay under this Agreement and requesting the deduction of amounts equal to the amounts that the IESO has failed to pay under this Agreement.

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 fails to pay to the OFA shall be deducted from the Appropriated Funds and paid to the OFA.

Formatted: Indent: First line: 0"

Formatted: Not Highlight

Formatted: Font: Bold

Formatted: Font: (Default) Times New Roman

Formatted: English (United Kingdom)

Formatted: List Paragraph, Justified, Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Tab stops: 1", Left + 1.5", Left + 2.5", Left + 3.55",

Formatted: Font: Times New Roman, 12 pt, English (United Kingdom)

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 and the Schedules constitutes the whole agreement between the Parties with respect to the matters dealt with in it, and it supersedes any prior agreements, 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.

Formatted: No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Section 7.~~9~~8 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

I have authority to bind the corporation.

Per: _____

Name: Michael D. Manning
Title: Executive Director & Chief Investment Officer, Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

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

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 September (·), 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 September (·), 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 September (·), 2017 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:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He
Subject:	FW: fhp credit facility agreement execution version v3 blackline.docx
Date:	Wednesday, October 25, 2017 12:24:15 PM
Attachments:	FHP Revolving Credit Facility Agreement 2017-2022 Execution Version v5.pdf FHP Revolving Credit Facility Agreement 2017-2022 Execution Version v5.docx FHP Revolving Credit Facility Agreement 2017-2022 Execution Version v5(blackline).docx

Sorry, this is the latest.

From: William Tan
Sent: Tuesday, October 24, 2017 2:00 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: RE: fhp credit facility agreement execution version v3 blackline.docx

Hello Lisa,

I have made the changes mentioned below. Please find the attached FHP documents.

WT.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 12:10 PM
To: William Tan <William.Tan@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: RE: fhp credit facility agreement execution version v3 blackline.docx

Hi Will,

As per the mark-up I sent you yesterday, section 7.9 should be moved before 7.8 and named “Entire Agreement”. Please revise and send me new versions for review.

Thank you,

Lisa

From: William Tan
Sent: Monday, October 23, 2017 5:08 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: RE: fhp credit facility agreement execution version v3 blackline.docx

Hello Lisa,

As per conversation, please find the latest version of the blackline and clean version of the FHP. Please forward to Victor Buza.

Thanks,

Will

From: Lisa Stein
Sent: Monday, October 23, 2017 10:19 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: fhp credit facility agreement execution version v3 blackline.docx

Hi Will,

Please find attached a revised black-lined version of the FHP credit facility agreement. The only change from the last version is the addition of an "entire agreement" clause in section 7.8, as discussed at our internal meeting last week. Please send this amendment to the IESO (and re-format the accompanying draft clean execution version as necessary).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: October ___, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the ____ day of October 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", "hereor', "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.

"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*.

"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.

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 subections 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 Payment 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 mature 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 reimbursement 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.l (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 the Minister of Finance is entitled to deduct from monies appropriated by the Legislature for payment to the IESO ("**Appropriated Funds**"), amounts equal to any amounts that the IESO fails to pay under this Agreement. On the occurrence of an Event of Default, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO fails 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 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, of the IESO's failure to pay under this Agreement and requesting the deduction of amounts equal to the amounts that the IESO has failed to pay under this Agreement.

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 fails to pay to the OFA shall be deducted from the Appropriated Funds and paid to the OFA.

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 and the Schedules 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: Michael D. Manning
Title: Executive Director & Chief
Investment Officer,
Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM
OPERATOR

Per: _____

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 October (·), 2017 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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: October ___, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the ____ day of October 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", "hereor', "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.

"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*.

"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.

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 subections 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 Payment 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 mature 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 reimbursement 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.l (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 the Minister of Finance is entitled to deduct from monies appropriated by the Legislature for payment to the IESO ("**Appropriated Funds**"), amounts equal to any amounts that the IESO fails to pay under this Agreement. On the occurrence of an Event of Default, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO fails 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 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, of the IESO's failure to pay under this Agreement and requesting the deduction of amounts equal to the amounts that the IESO has failed to pay under this Agreement.

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 fails to pay to the OFA shall be deducted from the Appropriated Funds and paid to the OFA.

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 and the Schedules 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: Michael D. Manning
Title: Executive Director & Chief
Investment Officer,
Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM
OPERATOR

Per: _____

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 October (·), 2017 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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: October ___, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the ____ day of October 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", "hereor', "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.

"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*.

"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.

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 subections 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 Payment 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 mature 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 reimbursement 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.l (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 the Minister of Finance is entitled to deduct from monies appropriated by the Legislature for payment to the IESO ("**Appropriated Funds**"), amounts equal to any amounts that the IESO fails to pay under this Agreement. On the occurrence of an Event of Default, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO fails 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 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, of the IESO's failure to pay under this Agreement and requesting the deduction of amounts equal to the amounts that the IESO has failed to pay under this Agreement.

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 fails to pay to the OFA shall be deducted from the Appropriated Funds and paid to the OFA.

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 and the Schedules 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~~8~~ 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: Michael D. Manning
Title: Executive Director & Chief Investment Officer, Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

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 October (·), 2017 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: Saulnier, Brett

To: "dup-john.s.lee@opg.com"; "leslie.wong@opg.com"; Gadi Mayman; Hunter, Rosalind; Malle Hanslep (MOF); ASHBOURNE, STEPHEN; Tobias P. Whitfield (MOF); Ken Kandeepan; Mike Manning; Ronald Kwan; Thouin, Alena (ENERGY); Tom McKinlay (MAG); VINER, JON; PRESTAGE, JA; Daniel Cayley (ENERGY); "sheen.liu@opg.com"; "tyler.mcauley@opg.com"; "clara.greco@opg.com"; "matthew.go@opg.com"; "anthea.yao@opg.com"; "jenny.jorda@opg.com"; "stuart.preston@opg.com"; "john.drewniak@opg.com"; "j.hahnparker@opg.com"; "Alvi, Sharig"; Innes, Michael; "Stoddart, Jesse - Debt Capital Markets"; "Rix, Lindsey - Legal"; "Hume, Tyler"; "Daou, Hadi"; "Persad, Nicole"; "mfitzpatrick@hunton.com"; "aobrian@hunton.com"; Smith, Elliot; King, Richard; Royer, Kate; Hughes, Timothy; "Adalja, Sunil"; "Persaud, Donnie - Debt Capital Markets"; Sebastiano, Rocco; "Maciel, Andrew"; "Benaiah, Ian"; "Khan, Nur"; ""Niehaus, Katrina" (Katrina.Niehaus@gs.com)"; "Delaney, Brian (Brian.Delaney@gs.com)"; "Conner, Robbin"; "Milligan, Peter"; Fullerton, Rick; "Lively, Pamela"; Adam, Ahmad; Krowles, Geralyn; Morris, Eleonore; Peter Hamilton; Michael Boll; Anthony Martinello (Anthony.Martinello@ieso.ca); Jeannette Briggs (jeannette.briggs@ieso.ca); kim.marshall@ieso.ca; Feldman, Michael; Ramchandani, Rima; Emes, Aaron; Olusoga, Yinka; Prado, Melissa; Dost, Mitchell; Mansoori, Nina

Subject: Fair Hydro -- Warehouse Financing Closing Call

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From:	Gadi Mayman
To:	Mark Donaldson (MOF)
Cc:	Tim Schuurman (MOF); Brandon Chaput (MOF); Ronald Kwan
Subject:	Fw: FHP Note -- CFS (DRAFT)
Date:	Wednesday, September 05, 2018 11:04:43 PM
Attachments:	FHP Note -- CFS (DRAFT)_Markup.docx

Hi Mark, thanks for sharing this note with us. It looks very good to me, but I wanted Ron, Ken and Mike to look at it, as they have more granular policy perspectives on various aspects of the program. I've attached Ron's comments and suggestions, so please feel free to follow up directly with him if you'd like.

Regards,
Gadi

From: Ronald Kwan
Sent: Wednesday, September 5, 2018 6:28 PM
To: Gadi Mayman; Ken Kandeepan; Mike Manning
Cc: Anna Strathy
Subject: RE: FHP Note -- CFS (DRAFT)

Hi Gadi,

I took a quick look and had a few suggestions/comments.

Ron

From: Gadi Mayman
Sent: September-05-18 17:42
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: FHP Note -- CFS (DRAFT)

Any comments? It looks reasonable to me at first glance.

Gadi

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Sent: Wednesday, September 5, 2018 3:57 PM
To: Tim Schuurman (MOF); Brandon Chaput (MOF); Gadi Mayman

Subject: FW: FHP Note -- CFS (DRAFT)

Draft note disclosure for CFS

From: Donaldson, Mark (TBS)
Sent: September 5, 2018 2:05 PM
To: Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>
Cc: Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Note -- CFS (DRAFT)

Hi Steen – per our conference call earlier today, this is our draft note disclosure on the GA refinancing.

Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. The Ontario Rebate for Electricity Consumers~~A rebate~~ (OREC) in the amount equivalent to the~~of~~ 8% provincial portion of the Harmonised Sales Tax (HST) ~~of~~on electricity bills ~~for~~of eligible residential, small business and farm consumers, commencing January 2017, funded by the ~~tax base~~government;
2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the ~~tax base~~government;
3. Reductions, existing and expanded for certain rural electricity consumers, funded by the ~~tax base~~government instead of the rate base;
4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the ~~tax base~~government;
5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the ~~tax base~~government; and
6. An additional reduction in current electricity bills for eligible residential, small business and farm customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25% for residential customers (with differential benefits for other eligible customers), which, unlike items 1 to 5 above, was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the ~~tax base~~government– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the cost ~~amount~~ of the current electricity price reduction to be borne by future ratepayers, and by making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

Commented [RK1]: "tax base" seems an internal colloquialism, not an official publication, vs being funded by general government (or "provincial") revenues (current or future, if borrowed for now).

Commented [RK2]: Is this part being Minuted now? Is this what ENDM is to return and report back on? Does / could this be reworded to reflect that this refers to reducing the cost, by having it be government borrowing?

Commented [RK3]: Is this in the other or revised Minute? Can we review that Minute too?

DRAFT

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.
- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

Commented [RK4]: The term used elsewhere seemed to be "investment asset" – or is that legislative "jargon" vs accounting jargon – with the latter using "intangible asset"?

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

DRAFT

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

As a result of the decision made on September 12, 2018, the government expects that ~~the~~ one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – ~~8% rebate~~OREC	~~Tax base~~Government	$810	NIL
2 – OESP	Government~~Tax base~~	$20	NIL
3 – Rural rate reduction	Government~~Tax base~~	$325	NIL
4 – First Nations delivery credit	Government~~Tax base~~	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Government~~Tax base~~	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Commented [RK5]: Seems low – is this just the incremental amount? Or does this reflect that the prior ratepayer "surplus" recovery in OESP had to be worked off first, so only a very small amount was government-funded in 17-18?

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From: Gadi Mayman
To: Ken Kandeepan; Ronald Kwan; Mike Manning
Cc: Anna Strathy
Subject: Fw: FHP Note -- CFS (DRAFT)
Date: Wednesday, September 05, 2018 5:41:47 PM
Attachments: FHP Note -- CFS (DRAFT).docx

Any comments? It looks reasonable to me at first glance.

Gadi

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Sent: Wednesday, September 5, 2018 3:57 PM
To: Tim Schuurman (MOF); Brandon Chaput (MOF); Gadi Mayman
Subject: FW: FHP Note -- CFS (DRAFT)

Draft note disclosure for CFS

From: Donaldson, Mark (TBS)
Sent: September 5, 2018 2:05 PM
To: Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>
Cc: Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Note -- CFS (DRAFT)

Hi Steen – per our conference call earlier today, this is our draft note disclosure on the GA refinancing.

Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. A rebate in the amount of 8% of electricity bills for residential consumers, commencing January 2017, funded by the tax base;

2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the tax base;

3. Reductions for certain rural electricity consumers, funded by the tax base;

4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the tax base;

5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the tax base; and

6. An additional reduction in current electricity bills for residential customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25%, which unlike items 1 to 5 above was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the tax base– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the amount of the current electricity price reduction to be borne by future ratepayers and making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.

DRAFT

- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

DRAFT

As a result of the decision made on September 12, 2018, the government expects that the one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – 8% rebate	Tax base	$810	NIL
2 – OESP	Tax base	$20	NIL
3 – Rural rate reduction	Tax base	$325	NIL
4 – First Nations delivery credit	Tax base	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Tax base	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From: Gadi Mayman
To: Mike Manning; Ken Kandeepan
Cc: Ronald Kwan; Usman Zahid; Anna Strathy
Subject: Fw: FHP Note -- CFS (DRAFT)
Date: Wednesday, September 05, 2018 11:06:29 PM
Attachments: FHP Note -- CFS (DRAFT)_Markup.docx

I didn't want to add too many cc's to what I'd replied to Mark, so here it is. Ron, thanks for your input on this - very helpful.

Gadi

From: Gadi Mayman
Sent: Wednesday, September 5, 2018 11:04 PM
To: Mark Donaldson (MOF)
Cc: Tim Schuurman (MOF); Brandon Chaput (MOF); Ronald Kwan
Subject: Fw: FHP Note -- CFS (DRAFT)

Hi Mark, thanks for sharing this note with us. It looks very good to me, but I wanted Ron, Ken and Mike to look at it, as they have more granular policy perspectives on various aspects of the program. I've attached Ron's comments and suggestions, so please feel free to follow up directly with him if you'd like.

Regards,
Gadi

From: Ronald Kwan
Sent: Wednesday, September 5, 2018 6:28 PM
To: Gadi Mayman; Ken Kandeepan; Mike Manning
Cc: Anna Strathy
Subject: RE: FHP Note -- CFS (DRAFT)

Hi Gadi,

I took a quick look and had a few suggestions/comments.

Ron

From: Gadi Mayman
Sent: September-05-18 17:42

To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: FHP Note -- CFS (DRAFT)

Any comments? It looks reasonable to me at first glance.

Gadi

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Sent: Wednesday, September 5, 2018 3:57 PM
To: Tim Schuurman (MOF); Brandon Chaput (MOF); Gadi Mayman
Subject: FW: FHP Note -- CFS (DRAFT)

Draft note disclosure for CFS

From: Donaldson, Mark (TBS)
Sent: September 5, 2018 2:05 PM
To: Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>
Cc: Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Note -- CFS (DRAFT)

Hi Steen – per our conference call earlier today, this is our draft note disclosure on the GA refinancing.

Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. The Ontario Rebate for Electricity Consumers~~A rebate~~ (OREC) in the amount equivalent to the~~of~~ 8% provincial portion of the Harmonised Sales Tax (HST) ~~of~~on electricity bills ~~for~~of eligible residential, small business and farm consumers, commencing January 2017, funded by the ~~tax base~~government;
2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the ~~tax base~~government;
3. Reductions, existing and expanded for certain rural electricity consumers, funded by the ~~tax base~~government instead of the rate base;
4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the ~~tax base~~government;
5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the ~~tax base~~government; and
6. An additional reduction in current electricity bills for eligible residential, small business and farm customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25% for residential customers (with differential benefits for other eligible customers), which, unlike items 1 to 5 above, was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the ~~tax base~~government– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the cost ~~amount~~ of the current electricity price reduction to be borne by future ratepayers, and by making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

Commented [RK1]: "tax base" seems an internal colloquialism, not an official publication, vs being funded by general government (or "provincial") revenues (current or future, if borrowed for now).

Commented [RK2]: Is this part being Minuted now? Is this what ENDM is to return and report back on? Does / could this be reworded to reflect that this refers to reducing the cost, by having it be government borrowing?

Commented [RK3]: Is this in the other or revised Minute? Can we review that Minute too?

DRAFT

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.
- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

Commented [RK4]: The term used elsewhere seemed to be "investment asset" – or is that legislative "jargon" vs accounting jargon – with the latter using "intangible asset"?

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

DRAFT

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

As a result of the decision made on September 12, 2018, the government expects that ~~the~~ one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – ~~8% rebate~~OREC	~~Tax base~~Government	$810	NIL
2 – OESP	Government~~Tax base~~	$20	NIL
3 – Rural rate reduction	Government~~Tax base~~	$325	NIL
4 – First Nations delivery credit	Government~~Tax base~~	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Government~~Tax base~~	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Commented [RK5]: Seems low – is this just the incremental amount? Or does this reflect that the prior ratepayer "surplus" recovery in OESP had to be worked off first, so only a very small amount was government-funded in 17-18?

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From:	Ronald Kwan
To:	John Kim; Bruno Amara; Malle Hanslep (MOF); Tobias P. Whitfield (MOF)
Cc:	Gavin He
Subject:	Fw: Finalized Package - OPG/IESO Indemnities
Date:	Tuesday, June 27, 2017 11:39:48 AM
Attachments:	Signed Memo.pdf 20170626--s.28 business case - IESO and OPG Indemnity OFHP -FINAL.DOCX 20170626-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx 20170626-IESO Indemnity Agreement - FINAL.DOCX 20170626-OPG Indemnity Agreement - FINAL.DOCX

Hi,

In case you have not received these directly.

Ron

From: Tekle, Jonathan (MOF) <Jonathan.Tekle@ontario.ca>
Sent: June 27, 2017 11:33 AM
To: Ronald Kwan
Cc: Gavin He
Subject: FW: Finalized Package - OPG/IESO Indemnities

Hi Ron,

I believe you were expecting these from Energy.

Cheers,
Jonathan

From: Schlaepfer, Martin (ENERGY)
Sent: June 27, 2017 11:24 AM
To: McLean, David (MOF)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: Finalized Package - OPG/IESO Indemnities

Hi David,

Attached is the finalized s. 28 package request for the OPG/IESO indemnities, with the transmittal memo signed by our Minister.

Please let us know when the Minister of Finance has approved the Section 28s.

Thanks,
Martin

Martin Schlaepfer
Director of Operations
Deputy Minister's Office
Ministry of Energy
T: 416-326-7688
E: martin.schlaepfer@ontario.ca

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

June 27, 2017

MEMORANDUM TO: Charles Sousa
Minister of Finance

FROM: Glenn Thibeault
Minister of Energy

RE: Request for section 28 approval of indemnities to the IESO, OPG, OPG's subsidiaries, and respective directors, officers, and employees in relation to the Ontario Fair Hydro Plan

---

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") the forms of indemnity for the IESO, its directors, officers, and employees; and OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*")) and their respective directors, officers, and employees (collectively the "Protected Persons"). Ministry of Finance and Ministry of Energy staff have worked together to review OPG's and IESO's indemnity requests and finalize materials.

OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their activities in carrying out the implementation of the Plan. OPG has also requested this form of indemnity for its subsidiaries (other than any financing entities as defined under the Act) ("Subsidiaries") and respective directors, officers and employees. The Ministry of Energy has committed to providing these indemnities. The Minister of Energy ("Minister") has been briefed and supports this request for approval.

The *Act* enables the implementation of the Ontario Fair Hydro Plan (the "Plan"). Under the Plan, the government has proposed to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the Plan. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the Plan.

The Plan is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG, OPG's Subsidiaries, and IESO in carrying out their roles in implementing the Plan will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations and their directors, officers, and employees may be subject to increased liability specifically due to their roles with the Plan. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The indemnities will provide OPG, OPG's Subsidiaries, the IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the Plan.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified. Should the payment be required, the Ministry will return to TB/MBC for an increase in its allocation.

Approval of these indemnities is requested by June 30, 2017. Failure to obtain approval could jeopardize the implementation of the Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

Sincerely,

Glenn Thibeault
Minister

Enclosures

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective activities in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (not including any financing entities as defined in the *Act*) ("Subsidiaries") and their respective directors, officers and employees.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to OPG and the IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed (June 1, 2017).

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to

investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO,

its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith".

Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under

the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

(b) Description of Risk and any Risk Mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund;

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities;

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in

which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variances in the Indemnities includes a waiver provision whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the Protected Persons' activities in the implementation, or otherwise relating to the ONFHP (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity as OPG's directors/officers/employees, as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity).

However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c) in the IESO Indemnity and section 3(c) in the OPG Indemnity) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 8 in the IESO Indemnity and section 9 in the OPG Indemnity), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG, OPG's Subsidiaries and IESO's (including their respective directors, officers and employees') willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's Subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation (“OPG”). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries (not including any financing entities as defined under the Act) and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by OPG or its subsidiaries (not include the financing entities as defned under the Act), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity’s debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers, members of a committee or panel established by the directors, and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the Ontario Fair Hydro Plan such as the creation of a regulatory asset in relation to the GA financing component of the Ontario Fair Hydro Plan, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers	Providing this indemnity will facilitate IESO in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by the IESO, its directors (including a member of a committee or panel established by the directors), officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors (inlucidng a member of a committee or panel established by the directors), officers and employees; and medium with respect to the corporation itself.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the Act, its respective regulation, and/or any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act). The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

EXECUTION VERSION

INDEMNITY

THIS INDEMNITY effective as of this 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan");

AND WHEREAS the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

    (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

Administration Act (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

EXECUTION VERSION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first written above.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

From: Ronald Kwan
To: Gadi Mayman
Subject: Fw: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 3:19:10 PM
Attachments: 04 - Directive IESO FHP 2017 v5.docx

Hi Gadi,

Are you okay with keeping a 25 bps spread on the new OFA-IESO credit facility, consistent with existing and past OFA credit facilities for the IESO?

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

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.

DRAFT

../2

- 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:

Charles Sousa
Minister of Finance

DRAFT

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	Fw: OPG/IESO Indemnities - Section 28 Approvals
Date:	Thursday, May 25, 2017 10:39:11 AM
Attachments:	OPG Indemnity - Torys, OPG Comments (May 17, 2017).docx Blackline OPG Indemnity.pdf 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK....docx 20170523-IESO Indemnity Agreement Confidential track changes -ENERGY LSB....docx

Hi Scott,

FYI. We received this Energy request yesterday from TBS via MOF Legal.

Would you have time to discuss?

Ron

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Sent: May 24, 2017 3:25 PM
To: Mike Manning; Ken Kandeepan; Opal Kandelas
Cc: Malle Hanslep (MOF); Ronald Kwan
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

FYI,

Indemnity materials, as discussed.

Toby

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

From: Kaufman, Paul (TBS)
Sent: May 24, 2017 11:25 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi again – the TBS DM has agreed with the staff recommendation here that it would be best if this request went to the Minister of Finance rather than the President of TB, since it primarily covers financing activities and since it fits in with/overlaps with some of the other activities that MOF and the OFA are more directly involved in.

I know this is coming somewhat late so wanted to check in with you both to make

sure you're comfortable with that approach before I suggest to Harkamal that she and her clients direct their request to MOF. Happy to stay involved or help out, or discuss if you have concerns.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi – as discussed with Malle just now, attached are the latest materials that we received through energy legal, and a note to the TBS client that summarizes a discussion I had this morning with Harkamal about this.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-24-17 10:17 AM
To: Strang, James (TBS)
Cc: Fung, Felix (TBS); Compagnone, Lisa (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

James, I spoke to counsel at Energy about the proposed revisions to the boilerplate indemnity agreements. I told her that some minor clarifications to the existing text likely wouldn't raise concerns here, but that even minor changes might add some time

to the approvals process on our end.

The changes that OPG is proposing are more substantive in nature and in a number of cases seem like they would result in the province assuming more than a reasonable amount of risk. Energy legal agrees with this and it sounds like energy is going to push back pretty hard with OPG. They also understand that we'll need them to provide a rationale for any substantive deviations from the original draft agreements.

It sounds like Energy is hoping to finalize the agreements today or tomorrow and proceed with approvals on their end. They hope to get us a minister-signed request by early next week, but will share the materials that they send up the line in the interim.

I also flagged the appropriations issue and they are going to consider it further. I didn't note the section 22 option because, as discussed, it's not clear if MOF would be comfortable with it. Our branch is going to discuss this file with MOF legal today, and we understand they are also talking to the OFA today.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-23-17 7:02 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Ho, Larissa (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks for this Paul.

We received comments back from OPG and IESO on the Business case as well as on the indemnity agreements. I've attached the updated business case that includes changes to reflect your comments as well as OPG and IESO's comments. Please let us know if you have any further concerns.

On the indemnity agreements, we are working through the proposed changes that both IESO and OPG have proposed to them. The IESO indemnity agreement changes that the IESO has proposed appear to be okay, and I've just made some further edits/comments that I am in the process of clarifying with IESO. Could you please take a look at the attached and let us know if there are any concerns from your end on the changes?

The OPG changes to its indemnity agreement are much more substantial and we are working through them still, however, I am wondering whether you can take a look and let us know if you or your policy clients have any significant concerns as well in the interests of time. The changes seem to be more for clarity, but given that they differ from the standard template language just wanted to make sure TBS is comfortable. Both clean and tracked versions of the OPG indemnity agreement are attached.

If it is easier and would be quicker to have a call to discuss, I would be happy to set something up.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani

Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:

    (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or

    (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

    (d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:

    (a) as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of any Claim;

    (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

DRAFT

(c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

DRAFT

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DRAFT

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

Comments from OPG
May 18, 2017

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")~~,~~

OF THE SECOND PART

WHEREAS the Corporation ~~is~~and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to ~~the implementation of~~(i) the *Ontario Fair Hydro Plan Act* ~~(the "Act~~, *2017* (the "Act"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "Fair Hydro Plan").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability ~~which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation~~due to or as a result of the ~~Act.~~Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. ~~to~~To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of ~~its~~their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands ~~and~~, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the Protected Persons arising specifically~~any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss

of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected ~~Persons' direct role in carrying out~~Person's activities ~~related to~~, acts and/or omissions in the implementation of, or otherwise relating to, the ~~Act (collectively, "Claims" and individually, a "Claim"),~~ Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to ~~Claims~~Losses of a Protected Person:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~but only to the extent that a Protected Person is actually ~~so indemnified or covered~~paid under such insurance policy ~~or fund~~for those Losses; or

(b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) ~~brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was

lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any ~~notice of a Claim that the Protected Person receives~~Losses, the Protected Person ~~must~~shall:

   (a) ~~immediately and without delay~~as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of ~~the~~any Claim~~(s)~~;

   (b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

   (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim~~(s)~~; and

   (d) promptly take all ~~necessary~~reasonable steps to obtain indemnification ~~or coverage~~ to the fullest extent possible under insurance policies ~~or claims funds~~, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

   A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity~~,~~ unless and only to the extent that~~, as a result of~~ such failure~~, the party which was entitled to receive~~ to provide such prompt notice ~~was~~has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim~~(s)~~ and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim~~(s)~~ without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim~~(s)~~, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing ~~the~~a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of

a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

5. ~~For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~ The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the

foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).

8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

9. ~~6.~~ This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10. ~~7.~~ The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **ONTARIO**
POWER GENERATION INC.
~~in the presence of~~)

)

_____) By: _____
~~Name:~~)

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

By:_____

Glenn Thibeault
Minister of Energy

Document comparison by Workshare Compare on May-18-17 3:01:44 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/23514933/1
Description	#23514933v1<TorysAtWork> - OPG Indemnity - Torys, OPG Comments (May 17, 2017)
Document 2 ID	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Description	C:\NRPortbl\TorysAtWork\NDRAKE\23514933_5.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	124

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On May 11, 2017 t~~T~~he Government introduced Bill 132, which, if passed would ~~is proposing to enact introduce~~ legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), agents (in the case of IESO), directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

Commented [HM2]: I've updated

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

~~***OPG – Role in Implementation of ONFHP***~~

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

~~The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.~~

~~As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.~~

Formatted: Space After: 6 pt

Formatted: Right: 0"

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Draft

~~Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.~~

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market.~~.~~ IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM3]: OPG/IESO input required on this regarding the specific risks they are concerned about.

~~The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.~~

~~Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.~~

~~To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.~~

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees, as well as IESO's agents is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below). Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

Formatted: List Paragraph,Bullet List 1,Heading 4 test,Unordered List Level 1,Indented Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG), agents (in the case of the IESO), directors, officers and employees, these Indemnities

Draft

would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

Formatted: Normal, None

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action

or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against ~~OPG or IESO's directors, officers, and employees~~the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited ~~specifically~~ to claims arising in relation

Draft

to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the ~~director~~protected persons.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to ~~c~~lossesl~~aim~~s:

(a) for which coverage is provided under an insurance policy ~~or claims fund~~ to the extent that the protected person is actually s~~o indemnified or covered~~paid under such policy ~~or fund~~for those losses; or

(b) for which other indemnities are already provided to the protected person but only to the extent that the Protected Person is actually so indemnified for those losses by such indemnities;

(c) ~~brought about or contributed to by~~is the result of the~~a~~ Protected Person's dishonesty, gross negligence or willful misconduct, but only such ~~if a judgment or other final adjudication adverse to the Protected Person establishes that there was~~ dishonesty, gross negligence or willful misconduct on the Protected Person's part ~~which was material to the cause of action as adjudicated~~has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~;~~ or

(d) to the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [PMK4]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [HM5]: Gross negligence is used to be consistent with the OBCA requirement.

Commented [PMK6]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

Commented [HM7]: I've changed the reference accordingly.

Draft

OPG's indemnity, with respect to clause (c) above, further provides that the Province agrees that it does not intend that any failure by a Protected Person to conduct a reasonable investigation with respect to advising the OPG about misrepresentations in any prospectus, registration statement or other securities/offering document, shall constitute "gross negligence" or "wilful misconduct" for this purposes of clause (c) above and does not disentitle the protected person from the Indemnity. This language has been included at the request of OPG in order to provide additional clarity to limit the OPG's liability with respect to carrying out any investigation of securities/offering documents.

The Indemnities would not apply with respect to ~~claims~~ losses for which coverage is provided and paid under insurance, or which are covered by another indemnity~~-~~under which the protected person is already so indemnified~~already provided~~;~~,~~ for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities;~~,~~ or for claims arising from circumstances where the ~~corporation, director, officer or employee~~protected persons did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face ~~risk~~risks of liability which ~~extends~~extend beyond the typical operations risk of the Corporation ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person arising ~~specifically~~ as a result of, or in connection with, the ~~Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]**

~~2. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a~~ payment has been made thereunder to such Protected Person~~ is actually so indemnified or covered under such policy;~~ or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the~~ payment has been made to such Protected Person ~~is actually so indemnified by~~under such indemnities; or

(c) ~~brought about or contributed to by a~~is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.

(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder~~ in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim~~(s)~~;

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims~~(s)~~ that is in the possession or under the control of the Protected Person;

~~(h)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~each Protected Person shall co-operate fully with the Province in connection with the same, and ~~the~~each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation~~, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.~~.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Formatted: Indent: Left: 1.5"

Formatted: Font color: Green

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of	**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**
_____ Name:	By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Cc:	Deena Padamadan
Subject:	Fwd: DRAFT IESO FH credit letter
Date:	Tuesday, May 09, 2017 10:30:21 AM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft.docx ATT00001.htm

---

Hi,

Please review.

Thanks,
Ron

Begin forwarded message:

> **From:** Anthony Martinello <Anthony.Martinello@ieso.ca>
> **Date:** May 9, 2017 at 10:26:15 AM EDT
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>, John Psinas <John.Psinas@ofina.on.ca>, Ronald Kwan <Ronald.Kwan@ofina.on.ca>, "Mike Manning" <Mike.Manning@ofina.on.ca>
> **Subject: DRAFT IESO FH credit letter**
>
> See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).
>
> I did speak with Moody's on April 28 to obtain their feedback.
>
> Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).
>
> As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.
>
> Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Program**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the Fair Hydro program (FHP) to reduce electricity prices for consumers in the province. Legislation is expected to be introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority's (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's global adjustment smoothing for a period of several months if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's deferral of electricity prices period plus a few months of contingency (i.e. September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 percent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- $975 million: draws to permit for FHP purposes; and
- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is consistent usage of these facilities we will contact the OFA

for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	John Kim
To:	Ronald Kwan
Cc:	Deena Padamadan
Subject:	Fwd: DRAFT IESO FH credit letter
Date:	Tuesday, May 09, 2017 5:59:39 PM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft.docx ATT00001.htm

---

FYI, just looking at it myself

Begin forwarded message:

> **From:** Sarah Harris <Sarah.Harris@ofina.on.ca>
> **Date:** May 9, 2017 at 4:15:14 PM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, Linda Smith <Linda.Smith@ofina.on.ca>, Opal Kandelas <Opal.Kandelas@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: FW: DRAFT IESO FH credit letter**
>
> Hello John,
>
> I'm not sure if you've seen the attached letter as of yet. We have received this request from IESO to set-up a credit facility for IESO to borrow $1,500M to fund the Fair Hydro Program.
>
> IESO indicates that they either wish to have the existing $975M credit facility between the OFA and IESO increased by $1,500M (incorporating their proposed provisions) or to have a separate $1,500M credit facility altogether. I'm aware that there have some discussions around this. Do you know if it has been decided if OFA or OEFC should provide this facility?
>
> Thanks,
> Sarah
> 5-8193
>
> ---
>
> **From:** Opal Kandelas
> **Sent:** Tuesday, May 09, 2017 11:54 AM
> **To:** Sarah Harris <Sarah.Harris@ofina.on.ca>
> **Subject:** FW: DRAFT IESO FH credit letter
> **Importance:** High

From: Mike Manning
Sent: Tuesday, May 09, 2017 11:21 AM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

As discussed.
Mike

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 09, 2017 10:26 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Program**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the Fair Hydro program (FHP) to reduce electricity prices for consumers in the province. Legislation is expected to be introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority's (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's global adjustment smoothing for a period of several months if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's deferral of electricity prices period plus a few months of contingency (i.e. September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 percent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- $975 million: draws to permit for FHP purposes; and
- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is consistent usage of these facilities we will contact the OFA

for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	John Kim
To:	Ronald Kwan
Subject:	Fwd: FHT - Asset Purchase from IESO
Date:	Monday, June 11, 2018 10:32:24 AM

FYI

Sent from my iPad

Begin forwarded message:

> **From:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Date:** June 11, 2018 at 9:55:36 AM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Subject: FW: FHT - Asset Purchase from IESO**
>
> Hi John
>
> See below. Let me know when you have a minute.
>
> Thx
> Bruno
>
> ---
>
> **From:** Carlos Yep
> **Sent:** Monday, June 11, 2018 9:54 AM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** FW: FHT - Asset Purchase from IESO
>
> FYI
>
> ---
>
> **From:** Mike Manning
> **Sent:** Sunday, June 10, 2018 8:57 AM
> **To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** Fwd: FHT - Asset Purchase from IESO
>
> Not sure why they are asking about this, have never been asked about the financing before. As I'm away can you please get back to them.
> Regards, Mike
>
> Begin forwarded message:
>
> > **From:** LADAK Lubna -TREASURY <lubna.ladak@opg.com>
> > **Date:** June 8, 2018 at 5:21:10 PM EDT
> > **To:** Mike Manning <Mike.Manning@ofina.on.ca>

Subject: FHT - Asset Purchase from IESO

Hello Mike,
We received a notice from the IESO this afternoon to purchase the current balance of $566 Million in their deferral account. This covers the months of April and May. I wanted to touch base with you before drawing on our warehouse facility to confirm you're able to provide financing for this purchase. Please let me know via email or give me a call. Thanks.

Have a good weekend.

Lubna Ladak | VP Treasury - FHP| Ontario Power Generation
700 University Avenue, Toronto, Ontario M5G 1X6 | 416-592-5984 | Cell 416-578-0219 | Fax 416-592-4189
lubna.ladak@opg.com

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

From:	Ronald Kwan
To:	Gadi Mayman
Subject:	Fwd: IESO - OFA
Date:	Tuesday, October 17, 2017 3:59:50 PM

Hi Gadi,

Aside from Anthony introductory remarks, I think his point 2 may raise eyebrows.

Ron

Begin forwarded message:

> **From:** Anthony Martinello <Anthony.Martinello@ieso.ca>
> **Date:** October 17, 2017 at 11:05:56 AM EDT
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>, John Kim <John.Kim@ofina.on.ca>
> **Cc:** Victor Buza <Victor.Buza@ieso.ca>
> **Subject: IESO - OFA**
>
> Ronald/John,
>
> Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.
>
> A few items as FYI for the proposed fair hydro structure:
>
> 1.
> DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.
>
> 2.
> DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.
>
> Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	John Kim
To:	Ronald Kwan
Subject:	Fwd: IESO credit facility
Date:	Friday, October 20, 2017 7:48:04 AM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean.docx ATT00001.htm

---

Pls. See attached.

Begin forwarded message:

> **From:** "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
> **Date:** October 6, 2017 at 10:07:17 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>
> **Cc:** "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
> **Subject: RE: IESO credit facility**
>
> John,
>
> I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).
>
> I am still working to determine who will sign for Energy and I'll let you know shortly.
>
> Tom.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** September 27, 2017 11:50 AM
> **To:** McKinlay, Tom (MAG)
> **Subject:** RE: IESO credit facility
>
> Hi Tom,
>
> Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.
>
> Thanks,
>
> John
>
> ---
>
> **From:** John Kim
> **Sent:** Monday, September 25, 2017 2:03 PM
> **To:** Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

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

Commented [ESP1]: Defer to Corporate?

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 the Ministry of Energy ("ENERGY~~MOE~~") 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~~MOE~~ 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~~MOE~~ agree that in the event that the Legislature appropriates any funds for payment 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").
    - Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay 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~~MOE~~ and seek

DRAFT

ENERGY~~MOE~~'s support in getting the IESO to pay the amounts owing within a reasonable cure period.

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, ENERGY~~MOE~~ will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by ENERGY~~MOE~~. Upon request, ENERGY~~MOE~~ will provide similar information to the Minister of Finance.

- ENERGY~~MOE~~ 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 to the IESO, ENERGY~~MOE~~ 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.

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.

DRAFT

From:	John Kim
To:	Ronald Kwan
Subject:	Fwd: IESO-OEFC Note_v3Clean_Markup.docx
Date:	Tuesday, November 21, 2017 3:12:14 PM
Attachments:	IESO-OEFC Note_v7_Markup.docx ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** John Kim <John.Kim@ofina.on.ca>
> **Date:** November 21, 2017 at 2:46:50 PM EST
> **To:** Opal Kandelas <Opal.Kandelas@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx**
>
> Hi Mike, Opal,
>
> I've updated the note further, as discussed with Mike, to clarify. I have comments in two areas. Pls. let me know if you have any comments on them or if I am mistaken.
>
> Thanks,
>
> John
>
> ---
>
> **From:** John Kim
> **Sent:** Monday, November 20, 2017 4:02 PM
> **To:** Opal Kandelas <Opal.Kandelas@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: IESO-OEFC Note_v3Clean_Markup.docx
>
> Thanks Opal…reflected some of Ron's comments but stayed with your edits where there were conflicts.
>
> Mike, let me know pls. if you're okay with the note and the recommendation.
>
> Thanks,
>
> John
>
> ---
>
> **From:** Opal Kandelas
> **Sent:** Monday, November 20, 2017 3:43 PM
> **To:** John Kim <John.Kim@ofina.on.ca>

Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John, Mike,

In the interest of time, I'm sending comments on the note to you both.

Thanks,
Opal.

From: John Kim
Sent: Monday, November 20, 2017 2:39 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Thanks Opal. Ron hasn't reviewed it yet. Hoping to build a consensus.

From: Opal Kandelas
Sent: Monday, November 20, 2017 2:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John,

I'm reviewing the note. Be back to you shortly.

Thanks,
Opal

From: John Kim
Sent: Monday, November 20, 2017 12:42 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean_Markup.docx

Hi Opal,

Let me know if you're OK with this version. I put CMD – Operations in square bracket pending your review.

Thanks,

John

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.
  - 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.
  - 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.

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.

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

- The extent of this risk is uncertain at this time, given 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~~y~~ are subject to 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 exisiting 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 2~~1~~0, 2017

From:	Gadi Mayman
To:	Ken Kandeepan; Ronald Kwan
Cc:	Mike Manning; Anna Strathy; Gavin He
Subject:	Fwd: IESO_OFA FEP 2017 Credit Letter
Date:	Friday, May 12, 2017 11:06:35 PM
Attachments:	IESO_OFA FHP 2017 Credit Letter.docx ATT00001.htm

---

Begin forwarded message:

From: Georgia Ritchie-Wust <georgia.ritchie-wust@ieso.ca>
Date: May 12, 2017 at 2:07:32 PM EDT
To: "gadi.mayman@ofina.on.ca" <gadi.mayman@ofina.on.ca>, "mike.manning@ofina.on.ca" <mike.manning@ofina.on.ca>, "Salman.Qadir@ofina.on.ca" <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>, Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

"We are what we repeatedly do. ***Excellence****, therefore, is not an act but a* ***habit****".*

…..(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 12, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the proposed Fair Hydro Plan (FHP) to reduce electricity prices for eligible consumers in the province. Proposed legislation was introduced this month for the FHP. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that in order to support the IESO's role in FHP implementation it will need greater credit liquidity than currently exists.

An existing credit facility between the IESO and the Ontario Financing Authority (OFA) is currently available for $975 million which includes support for the current Regulated Price Plan (RPP) program. The IESO proposes that a separate and additional credit facility be provided by either the OFA or Ontario Electricity Financial Corporation (OEFC) to support only the FHP credit needs. A separate facility for the FHP is preferable to ensure operational efficiency and interest tracking.

IESO's FHP Credit Requirements and Rationale

Below we have outlined the IESO's expected credit needs including the current OFA facility as follows:

	OFA:IESO Facility	New FHP facility
Current credit facilities	$975 million	$ -
Reduction due to FHP	($500 million)	$ -
Increase due to FHP	$ -	$2,000 million
Totals Credit Facilities	$475 million	$2,000 million

The above $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. In addition, the IESO has had recent discussions with OFA staff to explain the rationale to support the overall $2,000 million FHP commitment.

We suggest the new FHP credit facility consider the following key provisions:

- 5 year term - to align with the FHP's initial period of deferral of electricity prices plus a contingency period (i.e. to September 30, 2022);
- interest charge - to be Province's cost of funds for borrowing with a similar term as determined by OFA / OEFC plus 0.25 percent per annum;
- Draws - to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers; and
- Existing $975 million OFA facility : draws to permit for FHP purposes until a new separate credit agreement for FHP purposes has been made available;

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facilities and we will provide such evidence for your records.

We appreciate your continued support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	John Kim
To:	Ronald Kwan
Subject:	Fwd: Indemnities
Date:	Thursday, June 08, 2017 10:31:42 AM
Attachments:	IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8.docx ATT00001.htm

---

FYI

Begin forwarded message:

> **From:** "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>
> **Date:** June 8, 2017 at 9:37:26 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Hanslep, Malle (MOF)" <Malle.Hanslep@ontario.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Elcombe, James (MOF)" <James.Elcombe@ontario.ca>
> **Subject: RE: Indemnities**
>
> Please find attached our comments on the questions list. Please let us know if you would like to discuss further.
>
> Best
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca
> Phone: 416-325-1456
>
> -----Original Message-----
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 7, 2017 8:43 PM
> To: Hanslep, Malle (MOF); Bruno Amara; Whitfield, Tobias P. (MOF)
> Cc: Salman Qadir; He, Gavin (OFA)
> Subject: RE: Indemnities
>
> Great, thank you.
>
> -----Original Message-----
> From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
> Sent: June-07-17 8:41 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: Re: Indemnities

Fyi we have been reviewing your note and adding some comments and will get it to you asap in the morning.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Bruno Amara
Sent: Wednesday, June 7, 2017 16:26
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: Indemnities

Hi Toby

Per our conversation this morning attached are further comments/questions regarding IESO/OPG indemnities which we plan to pass on to the appropriate policy contacts. Could you please review and add any questions that you feel may be relevant. And delete any that you think may be irrelevant for the policy side.

Thanks for your help
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Wednesday, June 07, 2017 10:20 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Indemnities

In preparation for our call in a few minutes, here are a few preliminary responses.

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 6, 2017 5:25 PM
To: Whitfield, Tobias P. (MOF)
Cc: Salman Qadir; Kim, John (OFA)
Subject: FW: Indemnities

Hi Toby

I'm guessing you were busy with provincial guarantee material today. But further

to my email below, we gathered some questions as we reviewed the IESO/OPG indemnity material (attached). They may not all be for MoF Legal to respond to, but insight on any of these would be appreciated. Let me know when you have time for a discussion.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis Electricity Finance Branch
Corporate and Electricity Finance Division Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>

From: Bruno Amara
Sent: Tuesday, June 06, 2017 11:38 AM
To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: Salman Qadir
<Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: Indemnities

Hi Toby,

Would you be in your office around 1:30 if we call to discuss the IESO/OPG indemnities. John Kim would probably also join in on the call. Please suggest another time if 1:30 is not convenient. I'll send out an invite when we settle on a time.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis Electricity Finance Branch
Corporate and Electricity Finance Division Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is

privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO/OPG Indemnities

Ministry of Finance Questions

~~1. Does the Ministry of Energy have a Vote Item in place that could accommodate any payment of indemnity, should it arise?~~

~~2.~~1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable ~~for~~and which the indemnity is intended to cover?

- ~~i.e., acting in bad faith examples.~~[NTD: They have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups?]
- ~~Does indemnity~~ Are there situations where someone might not be acting in good faith ~~-~~and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?~~. cover anything else other than acting in bad faith?~~
    - i. Request for Approval ~~note~~ points out that *Electricity Act, 1998* already protects IESO's ~~and~~ directors, officers, employees or agents ~~certain persons~~ against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The~~.~~ Fair Hydro Plan ~~Bill 132~~ has similar language for OPG s. 39(1), ~~albeit~~ but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?~~ just for the corp.~~
    - ~~i.~~ii. Has consideration been given to providing an indemnity to directors, ~~f~~officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)
- Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

~~3.~~6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided- by ~~from Province or others through~~ the indemnity?

~~4.~~8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

~~5.~~9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?

- What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
- Or does SPV require an indemnity as well and why?
- How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?
- Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

~~6.~~10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

~~7.~~11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, does this affect accounting?

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously,

the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?

~~8.~~13. 9(c) – Should this also reference that certain remedies such as specific performance etc not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

14. Contingent Liability chart may need to be made more consistent with business case.
15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

~~9. Is the Indemnity Agreement intended to reference the summary in the Contingent Liabilities table? Even if the table is for reference, it should be consistent with the business case, provided by Energy, and the Indemnity Agreement.~~

~~10. For example, comments around indemnity covering activities that may not be seen as in good faith are to be covered under the Indemnity Agreement, as per the business case note. This is not mentioned/referenced in the table [or in the agreement].~~

~~11. Note: Electricity Finance Branch, OFA is proceeding to draft Indemnity approvals on the following basis. Please indicate if you have different assumptions/understanding.~~

- ~~This is an approval under Section 28 of the FAA~~
- ~~Minister of Energy will provide a written request for S. 28 approval to the Minister of Finance~~
- ~~This will not require an OIC for a statutory appropriation and MOE will need to provide confirmation that should any liability arise as a result of the indemnity agreements, MOE will be responsible for funding, within its approved allocation, any payments.~~
    - ~~i. EFB assumes that any request for payments with respect to an indemnity would need to be reviewed as they occur and payments would require a voted appropriation from Ministry of Energy~~

From: Ronald Kwan
To: John Kim
Subject: Fwd: Meeting with Energy
Date: Monday, June 11, 2018 11:57:08 PM

Hi John,

FYI.

Ron

Begin forwarded message:

> **From:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Date:** June 11, 2018 at 10:00:21 PM EDT
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject: Re: Meeting with Energy**
>
> Hi Ron, Gadi met with Serge and OPG today. All were in agreement that IESO should use the OFA loan to pay down the deferral account. Serge was going to communicate that direction to IESO.
>
> Anna
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Jun 11, 2018, at 2:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Anna,
> >
> > As discussed, IESO is looking to clear the anticipated $566 million in the deferral account arising from the April and May periods. Of that, currently, IESO has drawn $256 million from the OFA facility and would need to draw a further $310 million in about a week when the May settlement amounts are cleared.
> >
> > With respect to the email chain that I discussed with you and Gadi, while it only made its way to CEFD this morning, OPG had emailed CMD on Friday. So, in the intervening period, this issue may have already been resolved as something to wait on for direction from the in-coming

government.

Ron

From: Ronald Kwan
Sent: June-11-18 12:44
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Meeting with Energy

Hi Anna,

As you may recall, the IESO has several financing facilities, two from the OEFC and two from the OFA.

The OFA ones have been used for interim financing for the IESO deferral account. When the deferral account was established, the IESO deferral account from the OFA was for up to $975 million, but that was replaced with two facilities – the $975 M facility was reduced to $475 million, and a new facility for $2 billion was established, with the latter focussed on short term financing of the IESO deferral account.

As with all OFA loans to public bodies, the OFA received a directive from the Minister for them (see attached for the $2 Bn facility).

Ron

From: Anna Strathy
Sent: June-11-18 12:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Meeting with Energy
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy

Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From:	Deena Padamadan
To:	Ronald Kwan
Subject:	Fwd: OFA Audit Risk Management Committee Deck
Date:	Monday, June 12, 2017 1:36:12 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v21_clean).pptx ATT00001.htm

---

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

From: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Date: June 12, 2017 at 1:34:25 PM EDT
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: OFA Audit Risk Management Committee Deck

Hi Deena,

Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.

We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.

The v21_clean file can also be found in this folder.

Thanks,
Shajee

Shajee Kathirgamanathan
Senior Advisor
Electricity Finance Branch, Corporate and Electricity Finance Division
Ontario Financing Authority
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

DRAFT

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

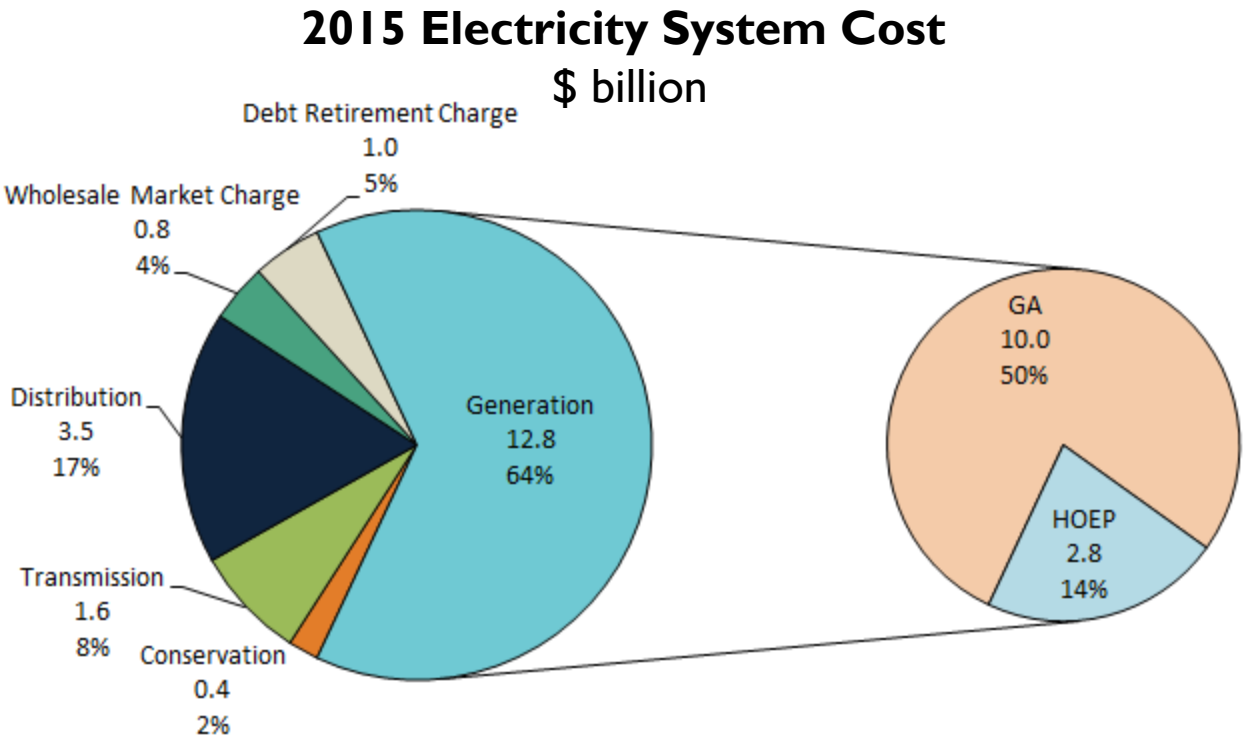
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

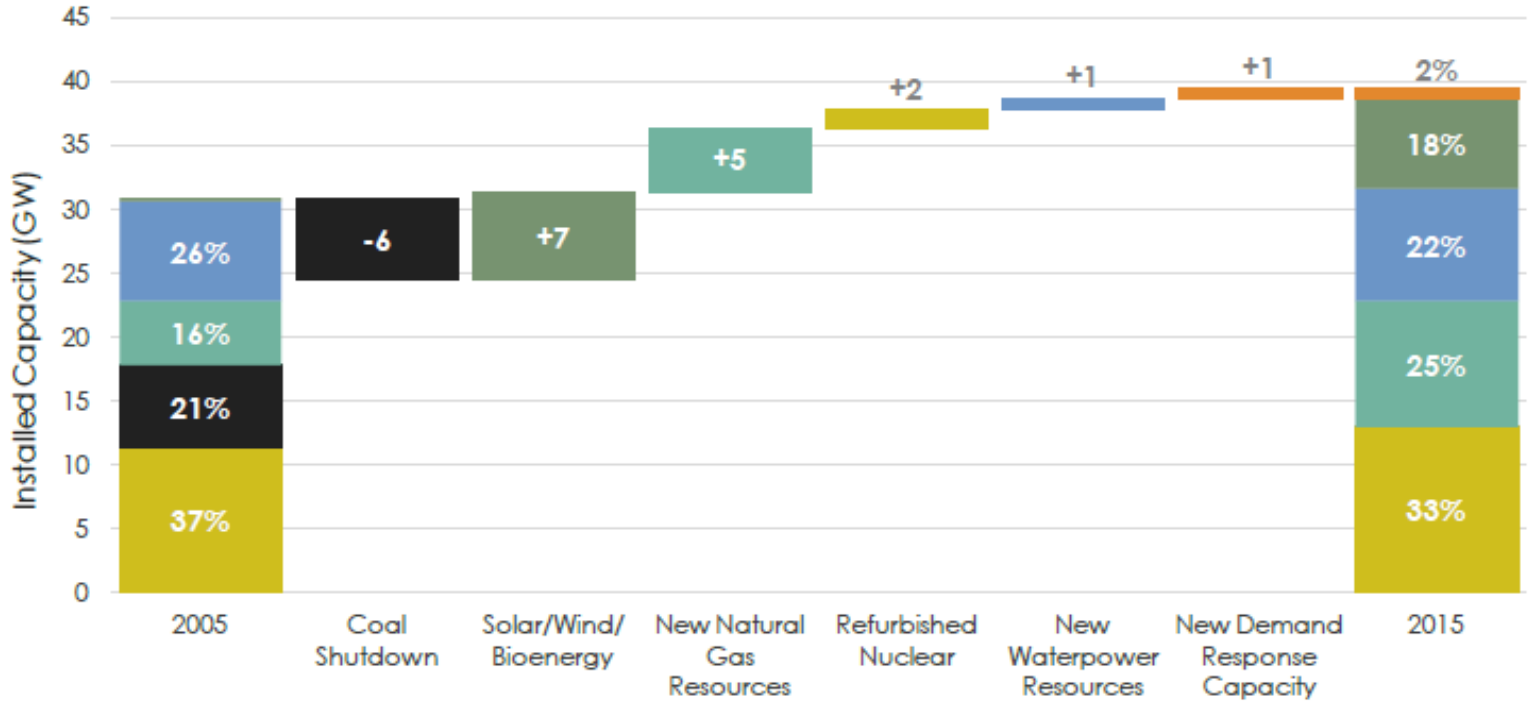
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

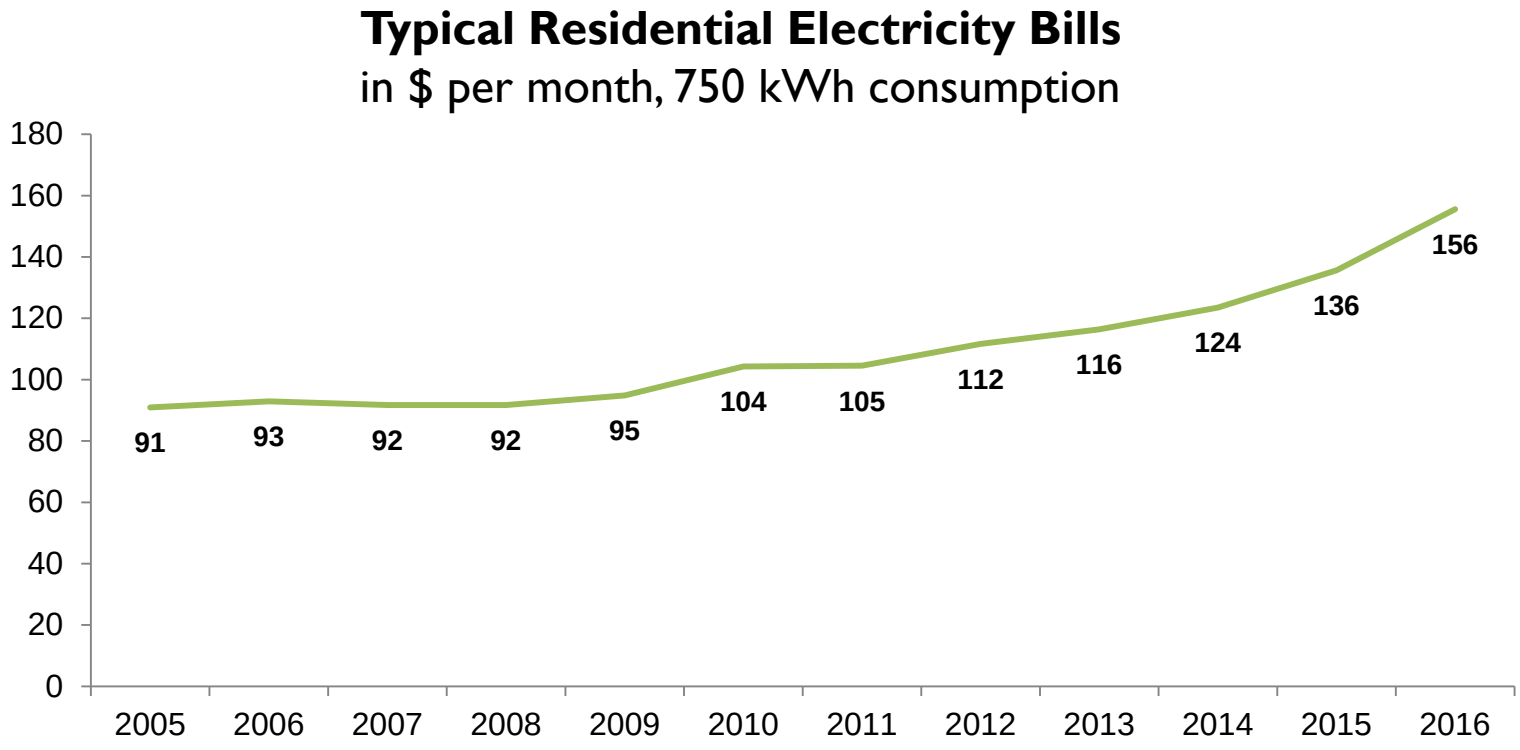
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

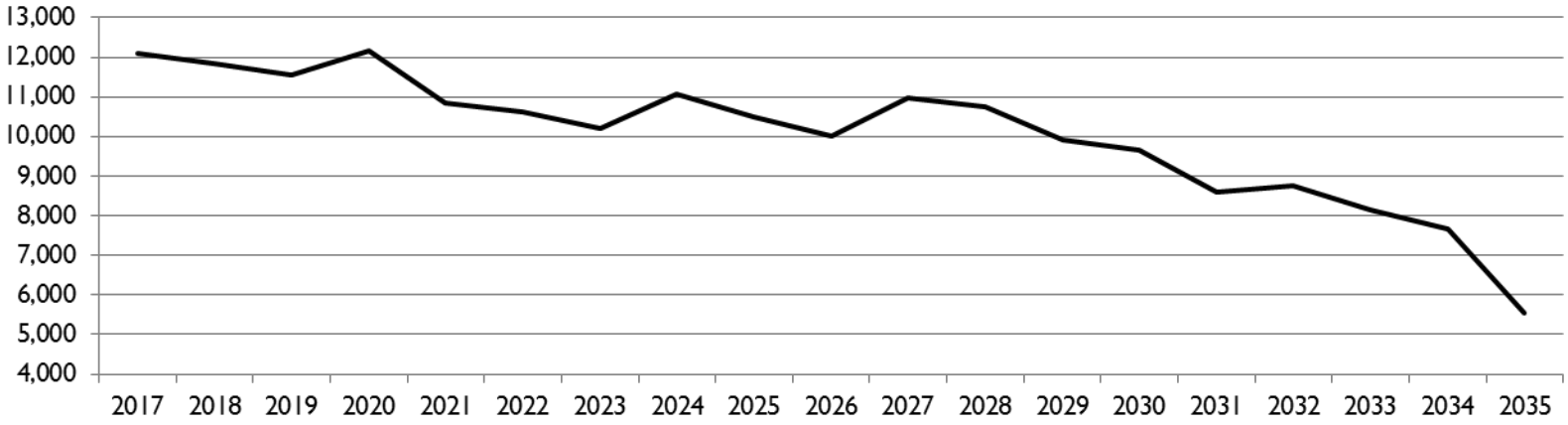
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The illustrative chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

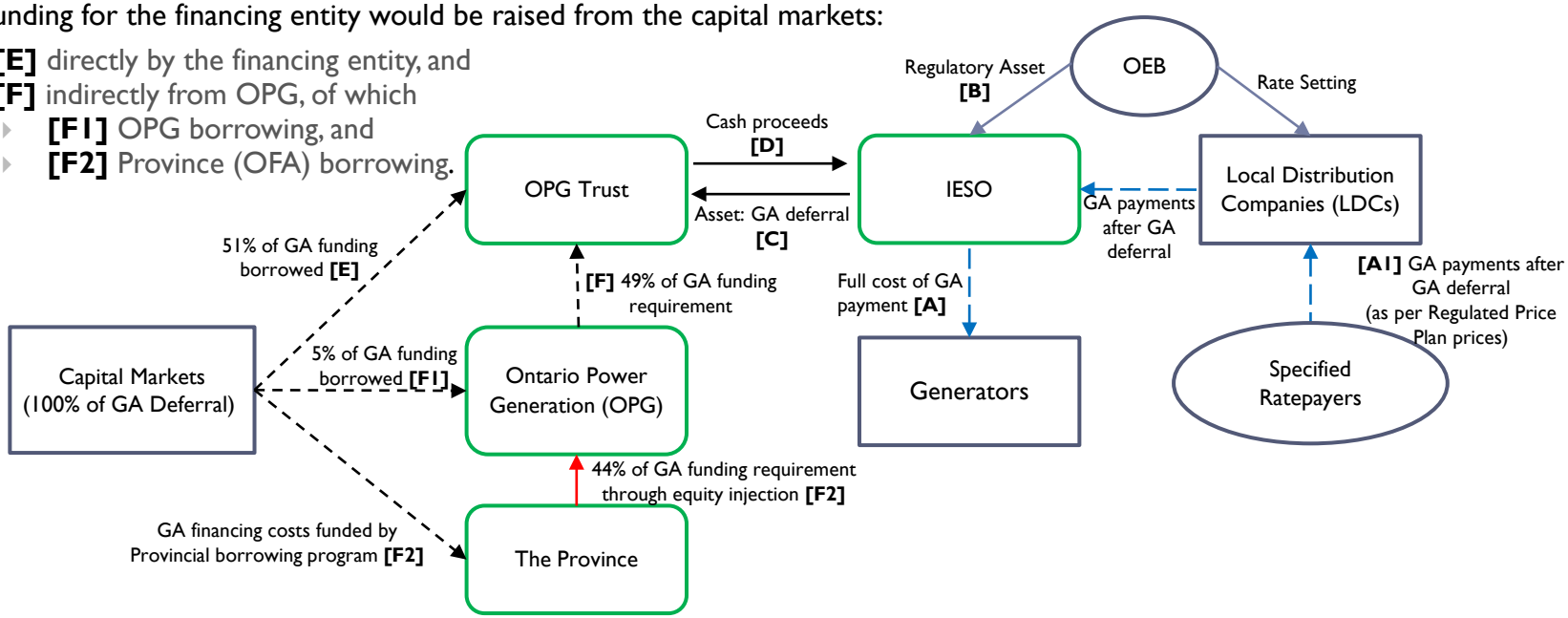
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

GA Financial Structure

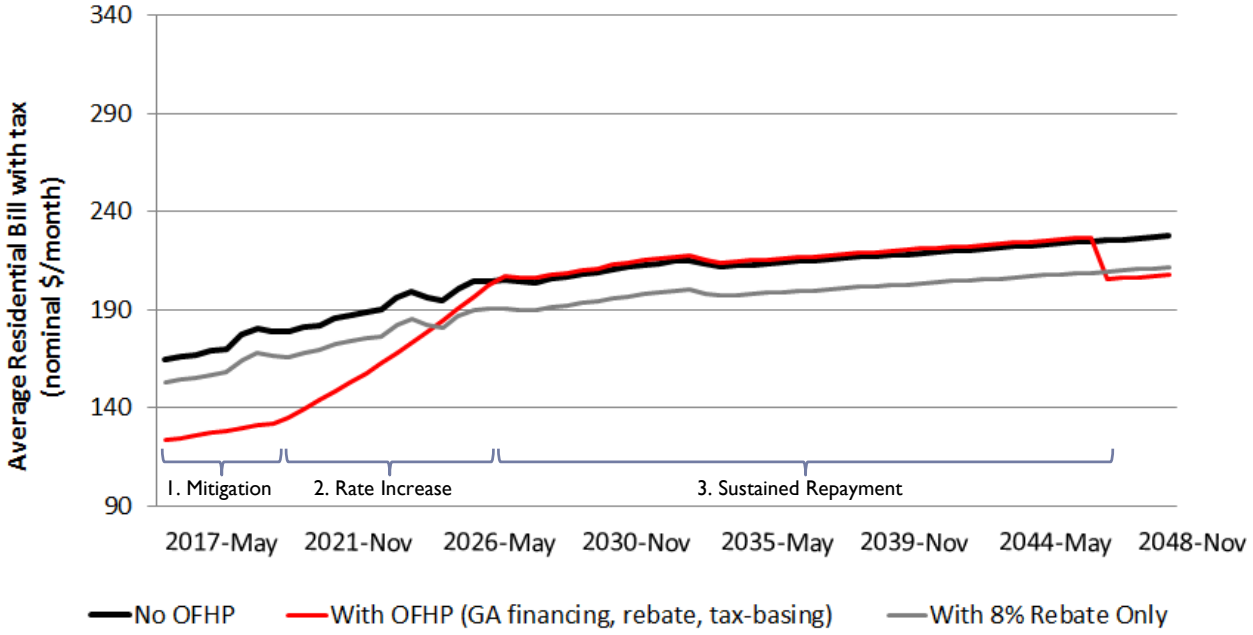
- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments).
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



DRAFT

Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see illustrative chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

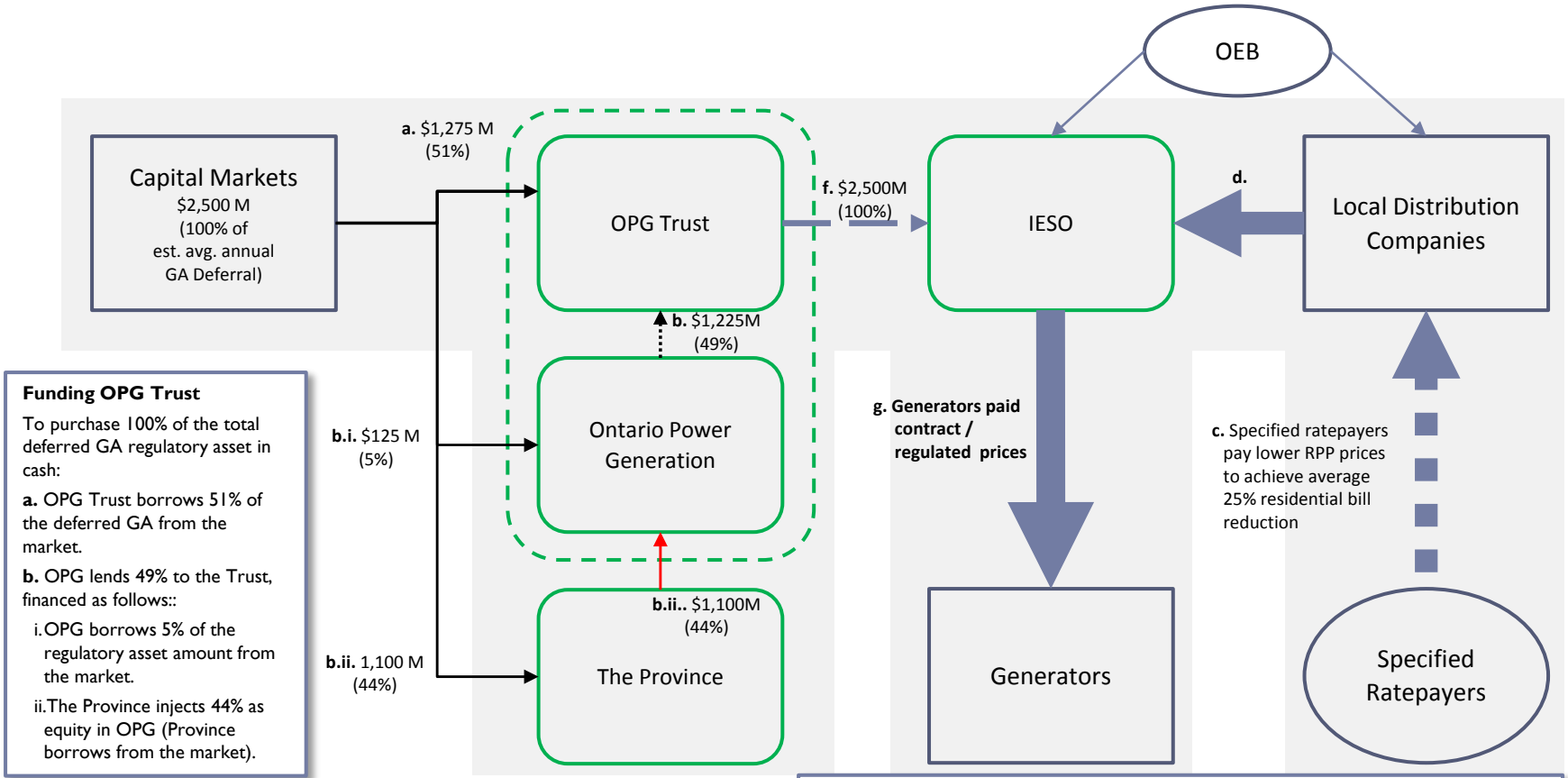
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill remains higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference represents deferral of GA and financing.

DRAFT

GA Financing Structure: Illustrative Fund Flows* - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

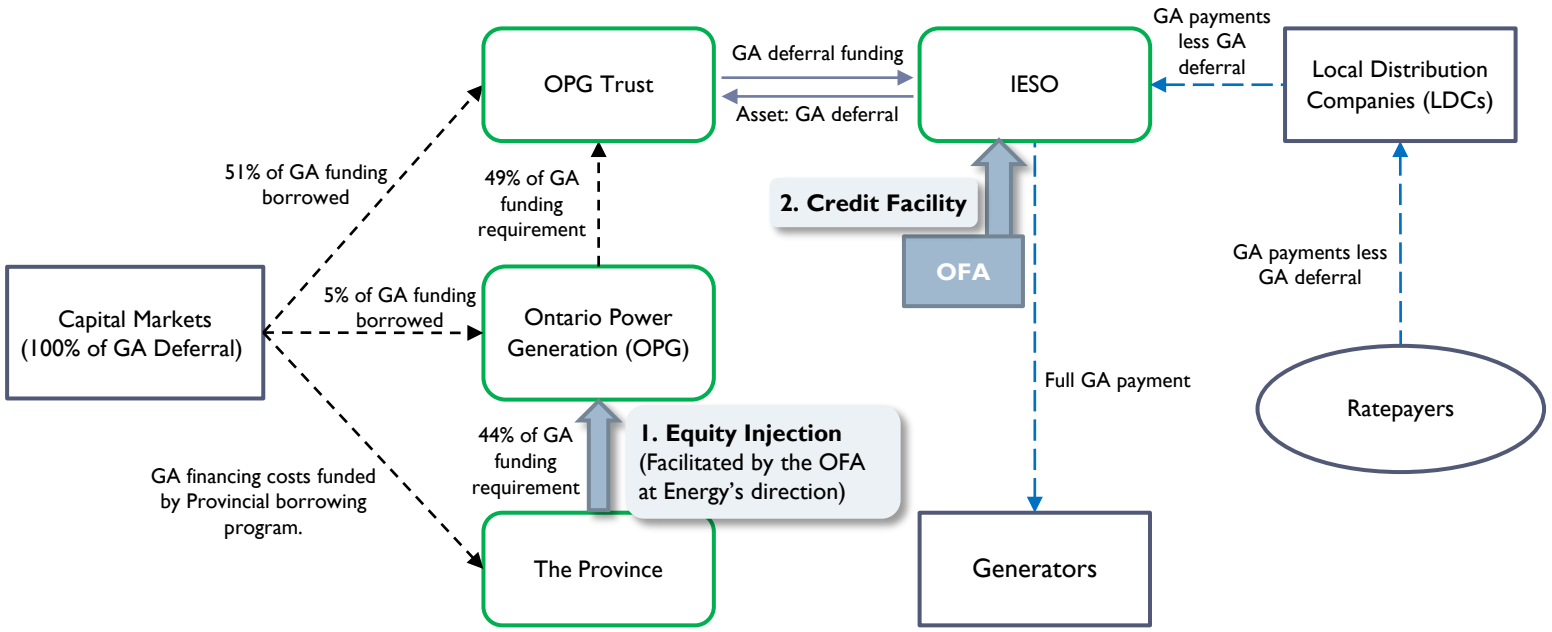
f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

* Amounts are illustrative and based on an assumed deferred cost, or regulatory of $2.5 billion.

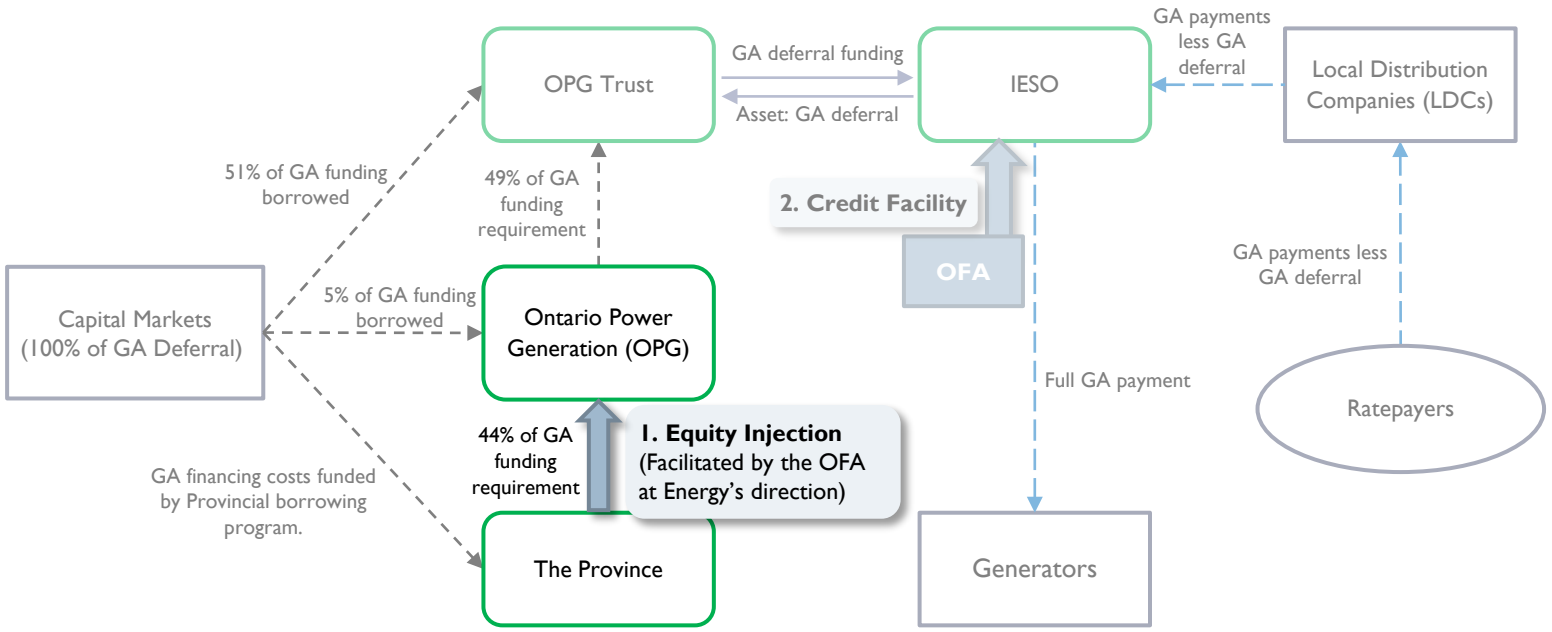
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO



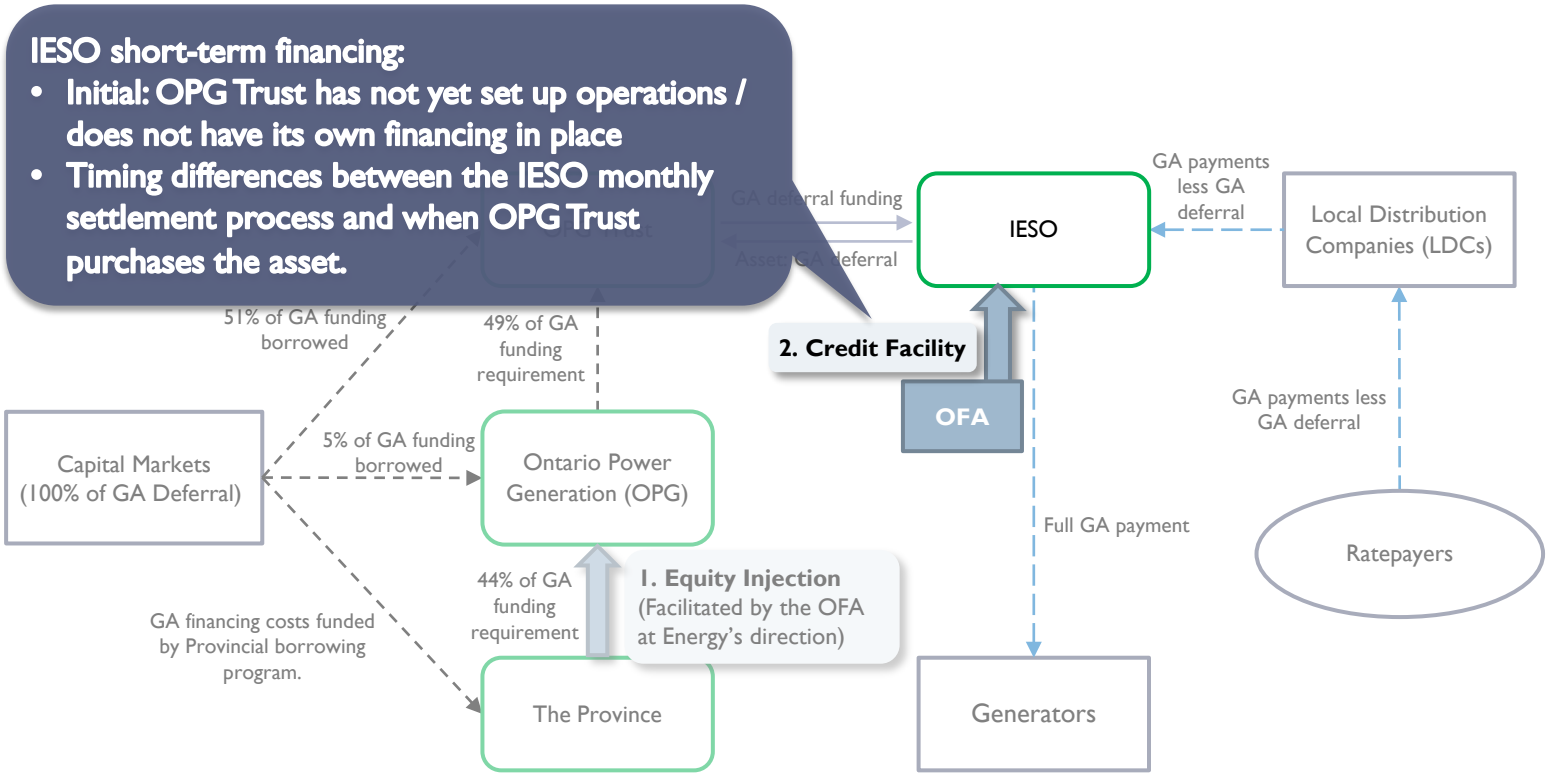
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1B related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which
  - on consolidation into Public Accounts, would be offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

DRAFT

GA Financing: Illustrative Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From: Ronald Kwan
To: John Kim
Subject: Fwd: OPG/IESO Indemnities - Section 28 Approvals
Date: Wednesday, May 24, 2017 2:46:54 PM
Attachments: 1 OFHP TB sub - 20170418_May7__clean.docx
ATT00001.htm

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
Date: May 24, 2017 at 2:36:20 PM EDT
To: "Kwan, Ronald (OFA)" <Ronald.Kwan@ofina.on.ca>
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

May 9, 2017 TB Submission attached. I don't believe so, it seemed to focus on backstopping securities.

See pages 19 & 25 related to indemnities.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: May 24, 2017 1:54 PM
To: Strang, James (TBS)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi James,

I had not heard that as a decision. We'll follow up.

Also, was the issue of this type of indemnity in Energy's TB Report Back submission from earlier this month? Would you be able to send us a copy of the submission.

Thanks,
Ron

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: May-24-17 11:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi Ron, we've heard that MOF/OFA will be leading the s28 request.

James

From: Arbabzadeh, Nina (TBS)
Sent: May 24, 2017 11:08 AM
To: Fung, Felix (TBS); Strang, James (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

OFA/MOF to lead! Sorry for the delay in getting back to you.

From: Nelson, Dane (TBS)
Sent: May 24, 2017 10:50 AM
To: Arbabzadeh, Nina (TBS)
Cc: Laughton, Patrick (TBS); Simone, Nicole (TBS)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Nina,

I just spoke to Helen and she agrees that MOF/OFA should lead this Sec 28 while TBS can provide support accordingly.

Regards,

Dane Nelson, Senior Policy Advisor
Treasury Board Secretariat | Deputy Minister's Office
Phone: 416-325-3617 | Mobile: 416-409-3437 | E-mail: Dane.Nelson@ontario.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

ONTARIO'S FAIR HYDRO PLAN – REPORT BACK

May 9, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

1. The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

    i. Implementation of Global Adjustment (GA) Refinancing;

    ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

    iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Note: The Independent Electricity System Operator (IESO) is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current lines of credit with the OFA and OEFC.

2.0 PURPOSE OF REQUEST

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25 per cent for a typical residential consumer, starting in the summer of 2017. Up to half a million small businesses and farms are also expected to benefit. Any rate increases for residential consumers over four years would be held to the rate of inflation. Note: These measures include the 8 per cent rebate introduced in January 2017 and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

CONFIDENTIAL

As part of the OFHP approval process, TB/MBC requested that the Ministry "report back" before legislation to enable OFHP was introduced on the following items:

1) GA Refinancing;

2) Social Programs; and

3) ICI Expansion.

In addition to the report back, the Ministry is also requesting the creation of a new transfer payment line, "Price Mitigation Support Initiatives" in Vote 2905-01. The purpose for this is to provide the Ministry an appropriate transfer payment line to support future activities and initiatives around electricity price mitigation for Ontarians.

There is no fiscal impact associated with this request. All new funding placed into the transfer payment lines will be offset by services dollars previously approved within the Ministry's multi-year allocation.

In February 2017, the Ministry reported back to TB/MBC on the details related to the establishment of the new Affordability Fund announced in the OFHP. In April 2017, the Affordability Fund Trust was established. It is expected that electricity distributors will be able to begin applying to the Affordability Fund Trust in Summer 2017.

The Ministry has developed proposed legislation to implement key components of OFHP by summer 2017, and address financing, accounting and legal issues raised in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations to enable implementation of OFHP.

1. GA Refinancing:

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

<u>Proposal</u>

On March 2, 2017, as part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and

future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. For example, by recognizing that generation assets are expected to continue to provide residual benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.

Under this proposal, the electricity bills of current residential consumers would be reduced by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

Implementation

To implement GA refinancing and mitigate financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;

- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);

- Launched a third party research project to assist with implementation of GA refinancing; and

- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

Proposed legislation to enable GA refinancing is planned for a May 2017 introduction.

CONFIDENTIAL

2. Social Programs:

To date, a number of electricity support programs are funded through the electricity rate-base. There is opportunity to provide support to a more targeted subset of customers who are disproportionately affected by increased electricity costs and to shift these costs to the tax base.

These customers include:

- **High Distribution Cost Customers:** Some customers in rural areas where the cost to distribute electricity is high can experience difficulty in reducing their electricity bill through conservation, particularly when reliant on electric heating.
- **Low-Income Customers:** Rising electricity costs make up a disproportionally large amount of the household expenditures for low-income households.
- **First Nation On-Reserve Customers:** On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

The proposed legislative amendments enable the creation or expansion of programs that provide meaningful rate relief to these customers.

Proposal

The Government is proposing to introduce legislation and regulatory changes for the enhanced electricity support programs which will shift costs from the rate base to the tax base, as well as establish the necessary frameworks to deliver these new or enhanced programs.

Rural or Remote Rate Protection

Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

The legislative proposal enables, through regulation, the transfer of the costs of funding the program for Hydro One's R2 customers from the rate-base to the tax-base for prescribed customers.

- R2 customers are those customers of Hydro One classified as living in the lowest density areas of the Province.

CONFIDENTIAL

Distribution Rate Protection

While the RRRP program helps mitigate some of the higher distribution costs for Hydro One R2 customers, as well as certain customers served by Algoma Power, Hydro One Remote Communities and James Bay First Nation LDCs, there is an opportunity to provide further relief to consumers served by higher cost distribution cost LDCs.

Proposed legislation will enable tax-based funding to support distribution rate protection for prescribed residential customers of LDCs with high-cost distribution rates. If passed, the eight high-distribution cost LDCs whose customers are eligible customers will be prescribed in regulation. Residential customers of Algoma Power and Hydro One R2 customers would be eligible for additional relief as these LDCs are the highest cost distributors in the province (as well as six additional higher-distribution cost LDCs).

Proposed legislation enables the establishment of a maximum monthly base distribution charge for those prescribed customers. If the proposed legislation is passed, the mechanism to set this charge will be established in regulation.

On-Reserve First Nations Delivery Credit

On July 12, 2016, the Province and First Nations in Ontario announced an agreement-in-principle for the Province to sell to First Nations for their collective benefit, shares of Hydro One Limited.

The Province would sell up to approximately 15 million shares (2.5 per cent of total current outstanding Hydro One common shares), depending on the level of First Nation participation, to a new collective investment fund owned by First Nations.

As part of discussions on Hydro One shares and rates at COO's All Chiefs Conference and the First Nations-Ontario Energy Table, the Minister of Energy issued a letter directing the OEB to prepare a report providing "advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers". The proposal is premised around the findings in the OEB Report submitted to the Ministry on December 29, 2016.

The program proposal involves the elimination of the delivery charge, or monthly service charge for those customers served by LDCs that do not have a delivery charge, for on-reserve customers prescribed in regulation.

The resulting First Nations Delivery Credit is a reflection of First Nation leadership on this issue and an example of the Political Accord coming to life.

CONFIDENTIAL

Ontario Electricity Support Program (OESP)

The OESP began on January 1, 2016 as a rate-payer funded program to provide relief to low income Ontarians who are struggling to afford their electricity bills. The OEB administers the program.

The Fair Hydro Plan committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

On March 23, 2017, the OEB issued a Decision and Order to end the OESP volumetric charge paid by all Ontario consumers on May 1, 2017 ($0.0011 per kilowatt-hour of power consumed). On April 10, 2017, Cabinet approved amendments to the OESP regulation (O.Reg. 314/15) to increase credit amounts by 50% and introduce new eligibility categories so more Ontarians can access the program. These changes will also come into effect on May 1, 2017.

The amendments to the *Ontario Energy Board Act, 1998* pertaining to OESP will move the program funding from the rate-base and transfer it to the tax-base, and enable alignment of the OESP with social assistance programs delivered by the Ministry of Community and Social Services.

Implementation

Rural or Remote Rate Protection (RRRP)

Appropriated funds shall be used to offset the cost of the RRRP program for electricity consumed on or after July 1, 2017.

The implementation of the amended RRRP program (moving the majority of costs to the tax base) will require oversight of the money appropriated from the legislature by the Ministry of Finance (MOF).

The OEB sets amount that LDCs charge for RRRP to all customers. Once the regulatory mechanism is in place to enable the recovery of the majority of RRRP costs from the tax base, the OEB will significantly reduce the RRRP charge. Change to the funding structure of the program does not require any additional implementation risks or efforts.

CONFIDENTIAL

Distribution Rate Protection

Appropriated funds shall be used to offset the cost of providing distribution rate protection to prescribed residential distribution rate protected consumers based on electricity consumed on or after July 1, 2017.

LDCs and eligible customers would be prescribed in regulation, if the legislation is passed. Additionally, the Ontario Energy Board would be empowered by regulation to determine the rate at which affected LDCs would be harmonized.

The efforts required to implement the program will fall upon the impacted LDCs who will need to adjust their billing systems in order to carry out the program.

On-Reserve First Nation Delivery Credit

A new regulation will need to be passed to set out the program particulars including eligibility for the program.

The LDCs will need to enter into communication plans in order to work with local First Nations Band Councils and to increase awareness of the delivery credit to all eligible consumers.

There are transitional provisions for both the enhanced rate protection and First Nations Delivery Credit that provide distributors with a prescribed time by which they must have adapted their billing systems while maintaining program eligibility for the rate assistance being provided. As part of the regulations, Energy intends to prescribe eligibility as of July 1, 2017. Distributors would be given a three month transitional period to begin delivering the rate assistance by no later than October 1, 2017.

Ontario Electricity Support Program

A legislative amendment to the *Ontario Energy Board Act, 1998* will allow funding to shift from the rate base to the tax base. The amendments will be proclaimed into force at a later date when the OESP charges collected to date (which are being held in an IESO variance account) are depleted. Amendments to the OESP regulation (O.Reg. 314/15) will be needed to implement these legislative changes.

CONFIDENTIAL

3. ICI Expansion:

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, the Industrial Conservation Initiative (ICI) was announced to help large industrial electricity power users better manage their electricity costs while reducing electricity consumption during peak periods.

ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are currently about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Proposal

On March 2, 2017, as part of OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

- As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech from the Throne.

Implementation

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and Demand Management (CDM) programs and/or Ontario Climate Change Solutions Deployment Corporations (OCCSDC) programs and pilots.

CONFIDENTIAL

In addition, the Ministry has retained the Ontario Chambers of Commerce (OCC) and the Canadian Manufacturing and Exporting (CME) to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

3.0 KEY CONTEXT

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which would reduce the electricity bills of residential consumers by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

OFHP also announced other measures to enhance business competitiveness, helping vulnerable consumers and bend the future cost curve of electricity (see Background for details).

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the OESP to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

The Ministry's report back to TB/MBC focuses on the following OFHP initiatives:

1) GA Refinancing:

As part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

- Today's electricity consumers have been responsible for the costs of investments in developing the clean, modern and reliable electricity system that Ontario has today and that will continue to provide benefit to future generations. There is an opportunity to recognize the long-term benefit of these generation assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

CONFIDENTIAL

To implement GA refinancing and to mitigate the financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;

- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);

- Launched a third party research project to assist with implementation of GA refinancing; and

- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

Financing, Accounting and Legal Risk Considerations / Mitigations

The Ministry was asked to report back to TBS/MBC with on details on how financing, accounting and legal risks would be mitigated.

Financing

OFHP Legislation

The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in the electricity system are allocated fairly among present and future generations of consumers. Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the (GA), including:

- Fair Allocation Amount: Is a calculation and allocation of clean energy costs over time. It is expected that the calculation would lead to decreased rates in the near term with rates higher than forecast in the long term. The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager

CONFIDENTIAL

(OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister.

- Fair Adjustment: Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018. Under the legislation, the OEB must determine the amount within 15 business days of the legislation coming into force. The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period May 1, 2018 to June 30, 2021.

- Clean Energy Adjustment: Is the mechanism to recover the under-collection of GA from eligible consumers during the recovery period. This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing. IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

The Ministry has prepared legislation and regulations in close collaboration with key ministries (i.e., TB, MOF, AG and CO), agencies (i.e., OEB, IESO, OPG) and third party financial advisors.

- The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recoverable.

- The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year

It is still possible that the full value of the Regulatory Asset may not be purchased. In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

In addition, the Ministry has been worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

In particular, the proposed legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:

CONFIDENTIAL

- OPG issuances of subordinated debt to the SPV/Trust representing up to 49% of total borrowing; and

- Conditional (springing) guarantees by the Province to provide a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).

Note: The ability to finance and the cost of financing will only be known with certainty once OPG takes this structure to market.

OPG Financing / OPG Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The proposed legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a “Regulatory Asset”.

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an “Investment Asset”.

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.

CONFIDENTIAL

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

- It is anticipated that the initial equity injection would take place as early as June 2017.

Through PRRT, the Ministry of Energy received approval for the creation of an operating asset "OPG Share Purchase" and expenditure increase of $1.1billion in 2017-18 within Vote 2905-5, which is based on the latest estimates by IESO, and provides flexibility to account for forecasting uncertainty. This approval is pending passage of the proposed legislation.

OPG will provide a two year forecast of its equity requirements to the Ministry on annual basis, as part of OPG's business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy's concurrence process.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual

CONFIDENTIAL

ratepayers. Note: The reverse is also true in regards to decreasing demand.

- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

IESO's Credit Facilities

IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current "line of credit" with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO's contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

Accounting

The legislation to enable GA refinancing has benefitted from the review and input of IESO/KPMG, OPG/E&Y and OPCD/E&Y.

The proposed legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.

Under the proposed legislation, OEB will issue an "accounting order" to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. This satisfies accounting concerns regarding OEB oversight in the establishment of the Regulatory Asset.

CONFIDENTIAL

IESO will effectively sell the "right to collect" deferred future revenue from ratepayers to OPG in return for cash proceeds.

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement.

To recover its revenue shortfall, IESO will establish a Regulatory Asset that it would sell to OPG's SPV/Trust.

KPMG

The Ministry has worked closely with the Independent Electricity System Operator (IESO) and KPMG on the accounting considerations of GA Refinancing (i.e., legislation, applications of accounting standards/principles, minimizing consolidation risks and ability to establish a regulatory asset).

In particular, the proposed legislation provides a structure that IESO and KMPG believe meets the necessary accounting requirements. Key elements include:

- An IESO variance account created by the proposed legislation that would be recognized as a "regulatory asset".

- An Ontario Power Generation (OPG) special purpose vehicle (SPV) / Trust that would not controlled by IESO and thus have no consolidation risk for IESO.

In addition, KMPG provided some commentary on the accounting requirement for the "derecognition" of the regulatory asset once it's sold to OPG SPV/Trust. KPMG advised that the regulatory asset should be derecognized upon transfer to the OPG SPV/Trust as IESO no longer has rights or obligations to the asset (i.e., the transformation from a regulatory asset to an investment asset).

OPG

The Ministry has worked closely with the Ontario Power Generation (OPG) and E&Y, on the accounting requirements to enable GA Refinancing with respect to consolidation (i.e., legislation, applications of accounting standards/principles, establishing a special purpose vehicle (SPV) / Trust).

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust,

CONFIDENTIAL

additional work will be done through the regulations and supporting agreements/documents.

- OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.

- OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Based on the existing and proposed legislation, key operating conditions being addressed in regulations and supporting agreements/documents and no introduction of new conditions that would conflict with OPG's control of the SPV/Trust, E&Y concurs with OPG's assessment that the accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Legal

In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:

- The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

- If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-

CONFIDENTIAL

year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

- By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.

- The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

The bill provides for provincial assurances, guarantees and a statutory cause of action.

The provincial assurance provision is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be

CONFIDENTIAL

imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

The guarantee provisions are intended to backstop the provincial assurance provision and provide that:

- The Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and

- The Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

The Ministry retained Blakes to provide external legal advice in the development of the legislation. The Blakes team provided securitization, constitutional law, energy sector and government expertise. This team was integral to balancing the accounting, legal and finaceability imperatives, as well as differing interests among OPG, IESO, OEB and investment dealers, in crafting the legislation. Blakes will continue to advise through the development of regulations and the commercial agreements that will ensue.

Navigant Analysis

Navigant Consulting has been retained and is conducting research and analysis that would support the implementation of GA refinancing. Specifically, Navigant is conducting analysis that would inform the expected lifecycle of existing generation infrastructure. Navigant is also analyzing the financial benefits that could be achieved by more closely aligning the costs of this infrastructure with the period over which it is expected to provide benefits. In addition, the Ministry has asked for analysis of the social, health and environmental benefits of phasing-out of coal-fired generation in the province and identify which, if any of these benefits are already accounted for in generator contracts.

CONFIDENTIAL

2) Social Programs:

Program Design

Rural or Remote Rate Protection (RRRP)

The legacy RRRP program remains intact with no changes made to the amount of the rate protection or the eligible LDCs. The proposed legislation provides the authority for the government to prescribe classes of customers, customers or LDCs that would be funded through the tax-base rather than the rate-base.

If passed, the government proposes to identify Hydro One R2 customers, as having their RRRP funded through appropriated funds.

Distribution Rate Protection

New Distribution Rate Protection program, to complement the Rural or Remote Electricity Rate Protection (RRRP) program, would be established through proposed legislative amendments under the *Fair Hydro Act, 2017,* and the creation of consequential regulations. Eligible residential customers would have their monthly base distribution charges held to a maximum amount.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

Customers of the following LDCs are eligible for the enhance protection: Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc.

On-Reserve First Nations Delivery Credit

Eligible on-reserve customers will receive a 100% delivery credit or the elimination of their monthly service charge on their electricity bills. The eligibility requirements will be prescribed under regulation.

There are 11 LDCs identified by OEB that provide service to on-reserve customers affected by the program. These include: Algoma, Attawapiskat, Bluewater, Cat Lake, Cornwall, Fort Albany, Kashechewan, Hydro One,

CONFIDENTIAL

Remote Communities, PUC(Sault Ste. Marie), Thunder Bay. In total, about 21,500 customers may be eligible.

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.

OESP credits vary by income level and family size, and there are two credit scales that include:

- The basic program credit ranges from $30/month to $50/month.
- An enhanced credit that ranges from $45/month to $75/month for consumers that are either Indigenous, use electric heat or use certain electrically intensive medical devices.

Ontario's Fair Hydro Plan (OFHP) committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

The proposed legislative changes will address the move to the tax base, and regulatory changes approved by Cabinet on April 10, 2017 will enable the expansion of the OESP effective May 1, 2017. Discussions are ongoing with the OEB and MCSS on aligning OESP delivery with other social assistance programs.

<u>Roles and Responsibilities</u>

Rural or Remote Rate Protection

The roles and responsibilities of the Board remain the same in terms of administering the legacy RRRP program. ENERGY will now be responsible for appropriating the funds from the legislature on an annual basis to cover the costs faced by those consumers or classes of consumers prescribed under regulation (namely Hydro One R2 customers).

Enhanced RRRP or Distribution Rate Protection

The Board would be empowered, by regulation, to set the maximum monthly base distribution charge, based on prescribed criteria.

ENERGY would once again need to appropriate money from the legislature to cover the costs of administering the program.

CONFIDENTIAL

On-Reserve First Nations Delivery Credit

ENERGY would be responsible for appropriating the money from the legislature to cover the costs of administering the credit to on-reserve customers. In addition, ENERGY would need to work with LDCs, Chiefs of Ontario and Band Councils to ensure the program is delivered to all eligible consumers.

Ontario Electricity Support Program

The OEB will continue to the deliver the OESP under the current legislative framework until the variance account is depleted. When legislative changes to shift the program from the rate base to the tax base are proclaimed, the OEB will continue to administer the program, but certain decision making responsibilities and oversights will shift to the Minister of Energy.

MCSS will begin supporting OESP uptake by helping social assistance clients to apply to the OESP. Legislative and regulatory changes will enable this work.

The IESO will continue to manage payments to utilities, unit sub-meter providers, and the OEB in relation to OESP credit delivery and program administration costs. When legislative changes are proclaimed, IESO will begin reporting costs to the Ministry to support forecasting and audit.

3) ICI Expansion:

As part of OFHP, the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors (i.e., with North American Industry Classification Standard (NAICS) codes commencing with the digits "31", "32", "33", and “1114”) in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

In addition, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach.

The rate-base impact of expanding ICI to consumers in the manufacturing and greenhouse sectors is expected to be modest for non-ICI participants. **Note:** The extent of the impact will depend on the uptake in the newly

CONFIDENTIAL

expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting after July 2017.

4.0 BACKGROUND

Decarbonizing and Modernize Ontario's Energy System

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

The Ministry of Energy has taken a number of actions to lower electricity costs for all consumers by:

- Deferring investments in generation (e.g., new build nuclear), improving market efficiency (e.g., wind dispatch) and decreasing the cost of renewable procurements (e.g., Green Energy Investment Agreement (GEIA) renegotiation, decreasing Feed-In Tariff (FIT) prices; and

- Increasing cost effectiveness and improving efficiency by adopting new electricity market approaches (e.g., no new NUG contracting and demand response).

Following the 2016 Speech from the Throne, several actions were announced to further reduce electricity costs:

- As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8 per cent.

- Expanded support to eligible rural consumers by updating Rural or Remote Rate Protection (RRRP) with the additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8 per cent rebate.

- Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.

- Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in savings.

CONFIDENTIAL

- Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – average annual savings of $15 million.

Ontario's Fair Hydro Plan

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). The OFHP includes the following:

- Refinancing the GA over a longer period for Regulated Price Plan (RPP) eligible consumers, including residential consumers and most small businesses and farms.

- Shifting cost recovery for Rural or Remote Rate Protection (RRRP) and Ontario Electricity Support Program (OESP) from electricity bills to the tax base, lowering the regulatory charges paid by ratepayers. Consumers of all sizes would benefit from this change.

- Helping vulnerable electricity consumers by enhancing electricity support programs, including:

  - Broadening RRRP to provide delivery charge relief for the customers of the local distribution companies (LDCs) with the highest delivery charges. We currently support approximately 350,000 Ontarians living in rural or remote areas through RRRP. The enhancement would extend relief to approximately 800,000 households in total.

  - Expanding the OESP, which provides relief directly on the bills of low-income consumers who have applied and meet the eligibility criteria. The expansion would increase OESP credits by 50 per cent and allow more Ontarians to benefit from the program.

  - Establishing a new Affordability Fund, which would provide financial support to lower-income Ontarians who are not eligible for the Home Assistance Program to make home energy efficiency improvements, helping to manage their energy costs.

  - Establishing a Delivery Credit to eliminate delivery charges for all First Nations people living on reserve.

- Expanding the Industrial Conservation Initiative (ICI), which allows large consumers to reduce their electricity bills by up to one-third by reducing their consumption during peak hours. The expansion will allow manufacturers and greenhouses between 500 kW and 1 MW to

CONFIDENTIAL

participate, in addition to the consumers over 1 MW that are already eligible.

- OFHP also committed to reducing system costs by improving sector efficiency and modernizing Ontario's electricity market, working in collaboration with the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

Legislation to Enable the Refinancing of Global Adjustment

To enable implementation of GA refinancing and mitigate financing, accounting and legal risks, the Ministry has developed proposed legislation (and is working on supporting regulations) that outlines:

- Roles and responsibilities for the OEB, IESO, OPG and the Province;
- A detailed Preamble, Purpose and Definitions;
- Details with respect to Fair Adjustment, Clean Energy Adjustment, Implementation (i.e., Financial Services Manager, Fair Allocation Amount, Financing Plan), Regulatory Asset and Investment Asset;
- Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
- Amendments to other acts (i.e., *Electricity Act* and *Ontario Energy Board)*.

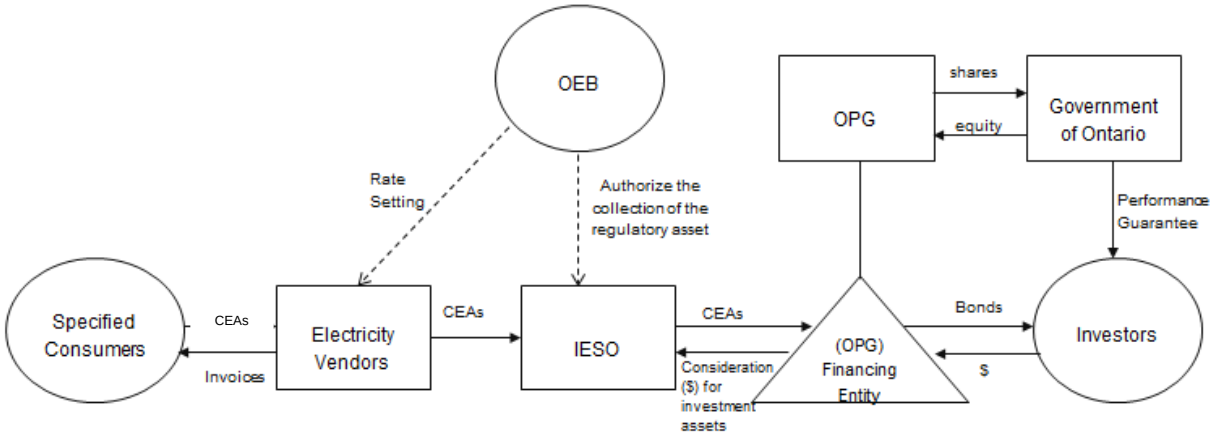
The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment.

The Ministry has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing in the development of the proposed legislation.

CONFIDENTIAL

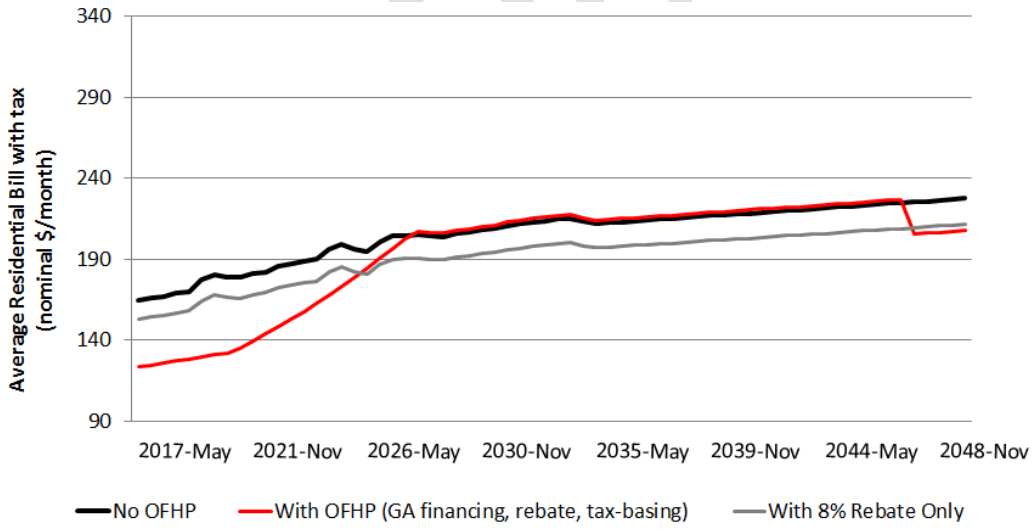
GA Refinancing Implementation Model – Overview

The diagram below outlines how the refinancing of GA would be implemented:



Note: CEAs are “clean energy adjustments”.

Multi-Year Profile of GA Refinancing / Assumptions



The chart above shows the expected multi-year profile under GA Refinancing for each Regulated Price Plan (RPP) period. In the first year, residential bills are projected to be 25 per cent lower as result of the OFHP. In the early years, bills increases are held to the rate of inflation – assumed to be 2% per year in the chart above. From July 1, 2021 onwards, prices increase at a higher rate compared to the first four years on the OFHP.

In the medium to longer term, residential bills exceed what they would have been but for the OFHP. However, in any given year, a typical residential bill under the OFHP cannot exceed what it would have been without OFHP by more than 10 per cent.

OPG's Financing Structure / Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected during four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province;

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

CONFIDENTIAL

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

Global Adjustment – Overview

The Global Adjustment (GA) accounts for the fixed costs, including capital costs, of running Ontario's generation fleet, as well as the cost of conservation programs. GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

It is via GA that much of the costs of investments in developing a clean, modern and reliable electricity system with a diverse supply mix are recovered.

The vast majority of GA costs now stem from greenhouse gas (GHG) emissions-free renewable and nuclear generation facilities, as well as natural gas plants that were constructed to improve system reliability and replace coal-fired capacity. Generators in Ontario received contracted or regulated rates, which are typically designed to recover capital, financing and fixed operations costs. The GA recovers these fixed costs of running the province's generation fleet, as well as the cost of conservation programs.

The majority of the province's electricity generators are under 20-year contracts and account for under 50% of the GA. Some of these generators will continue to provide value to the electricity system beyond their contract lives (i.e., beyond 20 years). Similarly, conservation costs are recovered annually on an 'as incurred basis' through GA while conservation initiatives can reasonably be expected to provide benefits to the electricity system over many years.

The Ministry is proposing in legislation to recognize the long-term benefit of specific assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs. The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

OEB's Regulated Price Plan (RPP) – Overview

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the Ontario Electricity Support Program (OESP) to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

CONFIDENTIAL

Social Program

Rural or Remote Rate Protection (RRRP)

Part of the program helps fund the costs of Hydro One customers classified into the "R2" residential rate class. There are approximately 335,000 R2 customers across the Province. These customers have some of the highest distribution costs in the Province.

- From 2001-2016 the program provided $125.4 million annually to help defray these costs.
- In the 2016 Speech from the Throne, this funding was expanded by $116.4 million to a total of $241.9 million.
- As of Jan 2017 R2 customers receive $60.50/month off their distribution costs.
- These customers still have high distribution costs and are often faced with significantly higher than average bills.

The higher than average consumption patterns coupled with higher than average distribution rates has resulted in monthly bills many view as no longer affordable or equitable.

RRRP is currently funded by rate-payers. All IESO-grid connected consumers pay a charge of $0.0021 per kilowatt-hour to off-set the costs of delivering RRRP. For an average residential customer this amounts to ~$1.60 per month. This charge will be substantially reduced once the R2 portion of the RRRP program is funded through the tax-base, rather than rate payers.

Distribution Rate Protection (DRP)

RRRP is targeted to customers based on geographic and density-based criteria. Many customers, including those in rural areas, face higher than average distribution costs, but are not eligible to receive rate protection under RRRP.

Energy is proposing legislative amendments that will broaden rate protection by creating a new distribution rate protection program to complement the Rural or Remote Electricity Rate Protection program.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

CONFIDENTIAL

- Providing distribution rate protection to a broader number of consumers would help mitigate geographic-based differences in rates for the consumers who are most impacted and often see such differences as inequitable.

Mitigation for all electricity consumers would be provided by moving the existing RRRP program costs and the proposed enhancements from the electricity rate base to the tax-base.

On-Reserve First Nations Delivery Credit

On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

ENERGY has a number of Bilateral Tables with the Chiefs of Ontario (COO) and First Nations that include the Energy Table to discuss policy issues, the Hydro One Negotiating Table to discuss Hydro One shares, and the Grievance Table.

The Grievance Table process was established at the request of COO as a means to avoid litigation to resolve historic grievances related to the energy sector and prevent these issues from impeding progress on broadening the ownership of Hydro One (H1).

The cost of electricity and delivery charges were identified as the prevailing grievance at the First Nations-Ontario Energy Table meeting in Timmins in 2016, and the Minister of Energy agreed to explore options for a First Nations Rate through the Grievance Table process.

Ontario Electricity Support Program (OESP)

The OESP launched on January 1, 2016. By the end of March 2017:

- Almost 192,000 have been enrolled in the program, which is approximately 1/3 of all potentially eligible low-income customers in Ontario.

- Over $60 million in credits have been provided to vulnerable consumers.

- 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.

CONFIDENTIAL

Industrial Conservation Initiative (ICI)

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, ICI was announced to help large industrial power users better manage their electricity costs while reducing electricity consumption during peak periods. ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are now about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Currently, ICI is available to electricity consumers who have an average monthly peak demand greater than 1 MW (i.e., Class A). Smaller electricity consumers – known as “Class B” consumers – are charged GA based on their total consumption regardless of when it occurs.

ICI provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their cost. Note: ICI is administered by the Independently Electricity System Operator (IESO) and Local Distribution Companies (LDCs).

As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech From the Throne.

On March 2, 2017, as part of Ontario’s Fair Hydro Plan (OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and CDM programs and/or OCCSDC programs and pilots.

CONFIDENTIAL

5.0 TIMING

As part of OFHP, the government announced that eligible electricity consumers would see the reduction to their electricity bills in the summer of 2017 (i.e., July).

On April 20, 2017, OEB announced that it has adjusted the RPP rates effective May 1, 2017 to account for its estimation of the impact of a portion of GA Refinancing. The Ministry anticipates that the OEB will set an interim rate adjustment following the passage of the legislation to enable GA Refinancing that would account for the full impact (i.e., 25 per cent).

The Ministry is planning to introduce legislation in early May 2017 and develop supporting regulations in early summer 2017 to enable GA Refinancing. Note: The OPG will require legislation and regulations to be in place to support its discussions with rating agencies and third-party financing.

The timeline for all of the social programs, with the exception of the OESP, is identical as the program implementation for the regulations that follow to be passed in unison for July 1, 2017.

Some of Ontario's Fair Hydro Plan commitments for the OESP came into effect on May 1, 2017 (e.g., removal of the OESP charge from customer bills; expanding credit amounts and program eligibility). Remaining changes associated with moving the program from the rate-base to the tax-base will be proclaimed at a later date when the OESP variance account is depleted. Additional regulatory amendments needed to implement this legislative change will come into effect on the same date.

As part of the OFHP, the government also announced the expansion of ICI to enable greater participation from the manufacturing sectors in Ontario.

The April 2017 ICI amendments enabled new electricity consumer's time to opt in to the expanded program ahead of the next ICI billing period (i.e., July 1, 2017). Note: Under ICI, as set out in Ontario Regulation 429/04, eligible electricity consumers must opt in to the ICI program on or before June 15 of each calendar each year.

6.0 FINANCIAL IMPACT

1) GA Refinancing:

As it relates to the "equity injection", these changes are expected to have no impact on the Provincial net debt position as the Province's increased investment in OPG will be offset by the incremental borrowing to fund the

CONFIDENTIAL

equity injections. The Province has assumed incremental income from OPG arising from interest income on the subordinated debt which OPG will lend to the OPG Special Purpose Vehicle (SPV)/Trust. This offsets forecast increases in Provincial interest on debt expenses associated with equity injections.

Proposed legislation to enable GA refinancing has been drafted to mitigate financing, accounting and legal risks. In addition, IESO and OPG have sought independent advice and confirmation with respect to financing, accounting and legal matters.

Note: There would be a significant impact on provincial net debt and the fiscal plan if the legal, financing and accounting conditions change.

2) Social Programs:

As approved in the TB/MBC submission of Mach 1, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Rural or Remote Rate Protection	344,000,000
Ontario Electricity Support Program	140,000,000
On-Reserve First Nations Delivery Credit	15,000,000

The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $109 million as of March 1, 2017. These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs. Due to the potential range in costs of the OESP, which will depend on program uptake and any costs associated with supporting increased participation, the set allocation is required despite the variance account.

ENERGY will report back as part of PRRT with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

3) ICI Expansion:

Since ICI is funded through the electricity rate-based and not the provincial tax-base, ICI expansion will have no direct financial impact for the Province.

With respect to rate-base impacts, expanding ICI to consumers in the manufacturing and greenhouse sectors (i.e., between 500 kW and 1 MW) is

CONFIDENTIAL

expected to result in a modest increase on electricity bills for non-ICI participants starting in July 2017. For example, preliminary analysis estimates that the increase on a typical residential bill would by up to 0.66% or just over $1/month based on a 2016 bill of about $158.

Note: The extent of the non-ICI participant impact will depend on the uptake in the newly expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

7.0 STAKEHOLDER ANALYSIS

Stakeholder	Comments
Eligible Electricity Consumers	• As a result of OFHP, eligible electricity consumers will welcome the immediate reduction in electricity bills that they will experience in the short to medium term.
Electricity Agencies	• In the development of legislation to enable implementation of OFHP, the Ministry has been working closely with OEB, IESO and OPG and their independent advisors.
Local Distribution Companies (LDCs)	• The Ministry hosted LDC workshop sessions on March 16 and April 19, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation.
Chief of Ontario (COO)	• COO have publicly supported the introduction of the First Nations Delivery Credit. • ENERGY met with COO on April 26, 2017 to discuss implementation.
Future Industrial Conservation Initiative (ICI) Participants	• On March 9, 2017, the Ministry posted an ICI expansion proposal for comment on the Regulatory Registry for stakeholder comment. The Ministry has received 7 comments. • The Ministry is also working with the IESO, OCC and the CME regarding targeted outreach in relation to the ICI expansion.

8.0 RISK ASSESSMENT AND MITIGATION

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			• In order to provide financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
Managing Interest Cost Risks	M	H	• Proposed legislation has been drafted with input from third-party financers (i.e., dealers). • OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%).
Provincial Guarantee is Triggered	L	H	• The proposed legislation sets out that the province would provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also establishes assurances that the Province would: - Through the Minister of Finance as provided by Lieutenant Governor in Council, agree to guarantee any debts and obligationsTR; and - Not hinder the charging and remittance of the under-collection of GA refinancing (i.e., through a provincial undertaking and guarantee).
IESO Failure to Establish a Regulatory Asset	L	H	• Under the proposed legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to do create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• Proposed legislation to enable GA refinancing the costs associated with electricity generation facilities will be allocated across present and future electricity consumers will be set out in the Fair Allocation Amount. • The degree of constitutional risk is in direct proportion to the extent the government is not able to show a

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities. • The Fair Allocation Amount will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Social Programs			
Social Program Implementation Delays	L	M	• Work with LDCs; provide transitional provisions. • Work with Chiefs of Ontario (COO) to develop a plan to identify eligible on-reserve customers. • The bill includes transitional provisions that would ensure customers remain eligible for the rate protection and First Nations Delivery Credit from the prescribed date.
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs. • Distribution Rate Protection costs are driven by a number of variable factors including: the OEB's rate setting process; the lowest cost distributor in the prescribed cohort of "high cost distributors" and consumption patterns. • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operatory (IESO) to ensure access to data for regular forecasting • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program.

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
Non-Status Indigenous communities without reserves or Metis could raise a Charter challenge on the First Nations On-Reserve Delivery Credit Program	L	L	• This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.
3) Industrial Conservation Initiative (ICI) Expansion			
Perceived Fairness Between Electricity Consumer Classes	M	L	• The expansion of the ICI program include electricity consumers in the manufacturing and greenhouse sectors with average monthly peak demand greater than 500 kW and less than 1 MW will impact those consumers that remain outside the program (i.e., Class B and RPP electricity consumers). • Increases to electricity bills will occur for non-ICI participants to ensure full cost recovery in the electricity system. Note: the extent of the impact on other non-ICI participants would depend on the uptake in the newly expanded ICI, but is expected to be modest. • Restricting eligibility to the manufacturing and greenhouse sector helps to ensure that the expanded ICI is focused on those consumers which are most impacted by GA costs and associated economic competitiveness pressures from neighbouring jurisdictions.

9.0 JURISDICTIONAL ANALYSIS

GA Refinancing approached outlined in the proposed legislation is model on a those used in the United States (e.g., Duke Energy), where utility debt is financed by selling it to investors with recovery from ratepayers over time.

CONFIDENTIAL

The Ministry conducted no jurisdictional analysis related to the expansion of social program funding as the structure of Ontario's electricity sector, and thus the delivery of these benefits, is unique.

The ICI program is unique to Ontario and the proposed expansion would not directly impact on other jurisdictions.

10.0 PERFORMANCE MEASURES

The proposed legislation sets parameters within which refinancing of GA can proceed. These parameters include the initial percentage reduction in eligible electricity rates, the number of years that rates will increase at a rate equivalent to CPI and the length of time within which the recovery of funds must take place (i.e., by 2047). In addition, OPG's existing financial reporting process provides an additional framework for monitoring and reporting of OPG's role in OFHP.

With respect to the social programs, performance will be evaluated by the amount of funding flowed to consumers in order to reduce their electricity bills. The Ministry will work with the OEB over the coming years to ensure that data is available to determine if the programs continue to provide meaningful rate relief.

The Ministry and the OEB have engaged with the Behavioral Insights Office at the TBS to consider ways to increase program participation. Discussions are ongoing.
.

With respect to ICI, the Ministry regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

11.0 COMMUNICATIONS

ENERGY has developed a comprehensive, two-phase media campaign to increase awareness of Ontario's existing rate mitigation measures and new proposed electricity initiatives under Ontario's Fair Hydro Plan OFHP):

- Phase I – Launched on March 13, 2017 and included radio and digital media in English and French. This was followed by multi-cultural extensions on radio in 19 languages. Phase I of the media campaign is complete.

- Phase II – Is expected to launch early Summer 2017 and will include television, radio, print, digital and social media advertising support.

ENERGY received TB/MBC approval on February 6, 2017 for an exemption from the competitive acquisition requirement under the *Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services* for the development of the electricity cost reduction public education campaign. Through this, ENERGY acquired the services of Rain43, an Agency of Record under Advertising Review Board's corporate vendor of record arrangement for advertising, public and media relations, and communication services, to develop this public education campaign with an estimates maximum value of $1,500,000.

As of July 20, 2015, PHD Canada is the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In 2016-17, through Phase I, ENERGY has spent approximately $1,000,000 on media planning and buying for radio and digital media. The cost of media space for television is substantially higher than radio; as such, ENERGY is forecasting to spend an additional $2,500,000 in 2017-18.

This campaign is integral for demonstrating Ontario's commitment to lower energy costs for ratepayers through the new proposed electricity initiatives. This campaign could also open the Ministry to increased scrutiny as critics may conclude savings are too little or too late to help those suffering from what the media has deemed energy poverty. Public perception may be unchanged as emotional triggers to rising electricity prices and the constant stream of negative news by the media could overpower the campaign.

The Ministry has assessed the risks, and deems the benefits for running this campaign outweigh any risks of not doing so. ENERGY anticipates reaction from electricity consumers is to be generally positive with an awareness that changes to the electricity system have led to a reliable, cleaner system that is now more affordable.

In addition, the communications for GA refinancing, delivery electricity social programs and ICI expansion will be referenced in ongoing announcements related to Ontario's Fair Hydro Plan (OFHP) broadly, and as necessary targeted communications for specific stakeholder group can be developed.

For example, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

The Ministry will ensure that the social programs are communicated effectively to stakeholders and specific target audiences. The Ministry will leverage its agencies and its relationship with LDCs to ensure eligible consumers are aware of the programs.

Chiefs of Ontario (COO) will be a vital partner in communicating the benefits of the First Nations Delivery Credit.

CONFIDENTIAL

The Ministry also believes there is opportunity for consultation on the design of the electricity bill, with a goal to refresh the regulatory framework to improve the value of the bill to the consumer across all LDCs. The Ministry proposes to convene with LDCs in July, once they've had sufficient time to implement the OFHP initiatives and prescribed messaging.

Changes of this nature will require more in-depth consultation with LDCs, as well as broader regulatory amendments to simplify the requirements, necessitating a longer period to implement. This refresh would also include opportunities to communicate OFHP savings in a more personalized and comprehensive manner. For example, each customer could receive a "personalized" message indicating how much they saved as a result of the plan.

Based on this feedback, the Ministry would aim to introduce regulatory amendments to simplify bill presentment and introduce dynamic OFHP messaging in the Fall 2017.

12.0 RECOMMENDATION

1) The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

    i. Implementation of Global Adjustment (GA) Refinancing;

    ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

    iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price

CONFIDENTIAL

Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Appendix:

- KPMG Opinion
- E&Y Opinion (including OPG Management Memo)

CONFIDENTIAL

From:	Ronald Kwan
To:	Bruno Amara
Cc:	Gavin He
Subject:	Fwd: Part 2 OFHP Regs - Draft Sub and RAN
Date:	Saturday, June 24, 2017 5:46:26 PM
Attachments:	2 TB Sub 170621 TB SUB June 27.docx ATT00001.htm 3 RAN OFHP Regulations Part 2 v1.doc ATT00002.htm

---

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
To: "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
Cc: "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
Subject: Part 2 OFHP Regs - Draft Sub and RAN

Hi,

Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early afternoon.

James

MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

ONTARIO'S FAIR HYDRO PLAN – REPORT BACK

June 27, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

1. The Ministry of Energy is reporting back with updates to the Treasury Board/Management Board of Cabinet (TB/MBC) on the following:

    i. Implementation of Global Adjustment (GA) Refinancing; and

    ii. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP).

2.0 PURPOSE OF REQUEST

On May 31, 2017, Bill 132, the *Fair Hydro Act, 2017* (*FHA*), which enables Ontario's Fair Hydro Plan (OFHP) under the *Ontario Fair Hydro Plan Act, 2017*, (*OFHPA*) and the implementation of electricity social program-related amendments to the *Ontario Energy Board Act, 1998*, was passed by the legislature. The Bill received Royal Assent on June 1, 2017.

The FHA is comprised of two Schedules:

- Schedule 1 – is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* (*OEBA*); and

- Schedule 2 – includes the electricity social program-related amendments to the *OEBA.*

On May 9, 2017, as part of its *FHA* review, TB/MBC requested that the Ministry of Energy report back on key updates and the details of proposed regulations that would support Ontario's Fair Hydro Plan (OFHP).

On June 14, 2017, to support implementation of OFHP, LRC / Cabinet approved a first package of proposed regulations – these regulations are now in effect.

On June 27, 2017, LRC/Cabinet will review the second package, including a new general regulation under Schedule 1 of the FHA and two regulatory amendments related to the social programs.

The general regulation is necessary to ensure that the mechanisms for refinancing of GA as set out under the *OFHPA* are in place in time for the first debt offering in fall 2017.

CONFIDENTIAL

The Ministry of Finance (MOF) is also seeking an OIC under CIPA to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2 billion. This change will allow the OFA to enhance the IESO credit facility as necessary to assist with the timely and successful implementation of the OFHP.

The new *OFHPA* and the proposed regulation, along with the independent accounting analysis, legal support and technical analysis and future financial agreements (i.e., expected to be reached and signed in fall 2017) together mitigate the financing, accounting and legal issues raised in the March 1, 2017 Cabinet Submission and the May 9, 2017 TB submission.

The proposed amendments in this package are needed to implement the changes to the Ontario Electricity Support Program (OESP), under (OFHP, as enacted under the *OFHPA*. The proposed amendments support the implementation strategy to increase enrolment of social assistance clients' into the OESP.

1. Implementation of GA Refinancing:

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid) and clean generation, and phased out the use of coal-fired generation. These initiatives have resulted in electricity prices increasing.

On March 2, 2017, as part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Under the *OFHPA* which enables GA Refinancing, electricity bills of typical residential consumers would be reduced by 25 per cent starting on July 1, 2017. In addition, the government has committed to hold increases to electricity bills to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

CONFIDENTIAL

Proposal

On June 27, 2017, to support implementation of OFHP, LRC / Cabinet will review the following proposed regulation:

- Creating a new Regulation ("General Regulation") to be made under the *Ontario Fair Hydro Plan Act, 2017*(*OFHPA*), which is Schedule 1 of the *Fair Hydro Act, 2017*.

The new regulation would, if approved, provide further detail on the roles and responsibilities of the Financial Services Manager (FSM, i.e., Ontario Power Generation (OPG)), the Independent Electricity System Operator (IESO) and Ontario Energy Board (OEB) under the OFHPA.

The proposed regulation would, if approved, also provide further criteria related to the development and implementation of the Financing Plan by the FSM, , the setting of the Fair Allocation Amount by the Minister of Energy and the recovery of the Clean Energy Adjustment from electricity consumers, as required under the OFHPA.

Implementation

To implement GA refinancing and mitigate financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- On June 1, 2017, the *OFHPA*, which enables GA refinancing and responds to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission, received Royal assent. Note: The Ministry has also prepared regulations to support implementation (as noted above);

- Received accounting opinions from E&Y (OPG) and KPMG (IESO);

- Received independent advice regarding financing and legal requirements from TD Securities (OFA) and Blakes (ENERGY); and

- Launched third party technical analysis to assist with implementation of GA refinancing.

CONFIDENTIAL

2. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP)

- The proposed amendments to O. Reg. 314/15 will facilitate the processing of OESP applications by MCSS on behalf of SA clients pursuant to an agreement with the Minister or the OEB, and help meet the government's goal of substantially increasing uptake in the OESP. Proposed amendments include:

    - Changes to the OESP eligibility definitions when MCSS is processing applications on behalf of SA clients that would make household size and household income – the two main criteria for determining OESP eligibility –consistent with the criteria that MCSS uses to determine financial eligibility for social assistance. These changes are needed because there are minor differences in how eligibility is determined between SA programs and the OESP.
    - Recognizing the "benefit unit" as eligible for OESP, such that a current or new SA client who is not the utility account holder, but is part of an account holder's benefit unit, can still receive support from MCSS to apply to the OESP.
    - Addressing current and future scenarios where those deemed financially eligible for SA fall outside of the current OESP eligibility categories. Proposed amendments to Schedule 1 would ensure that anyone deemed financially eligible for social assistance (and is part of a benefit unit that is billed directly for electricity) would also be eligible for OESP.

- The proposed amendments O. Reg. 314/15 (Ontario Electricity Support Program) made under the OEBA are needed to implement the changes to the Ontario Electricity Support Program (OESP), under Ontario's Fair Hydro Plan (OFHP), as enacted under the FHA. The proposed amendments support the implementation strategy to increase enrolment of social assistance clients' into the OESP.

Rural or Remote Rate Protection

Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

The new legislation enables, through regulation, the transfer of the costs of funding the program for Hydro One's R2 customers from the rate-base to the tax-base for prescribed customers. The regulation will also prescribe the monthly amount of rate protection available to Hydro One R2 customers through RRRP.

CONFIDENTIAL

- R2 customers are those customers of Hydro One classified as living in the lowest density areas of the Province.

Distribution Rate Protection

While the RRRP program helps mitigate some of the higher distribution costs for Hydro One R2 customers, as well as certain customers served by Algoma Power, Hydro One Remote Communities and James Bay First Nation LDCs, there is an opportunity to provide further relief to consumers served by higher distribution cost LDCs.

The new legislation enables tax-based funding to support distribution rate protection for prescribed residential customers of LDCs with high-cost distribution rates. Eight high-distribution cost LDCs whose customers are eligible customers will be prescribed in regulation. Residential customers of Algoma Power and Hydro One R2 customers would be eligible for additional relief as these LDCs are the highest cost distributors in the province (as well as six additional higher-distribution cost LDCs).

The regulation will set out a process that the OEB will utilize to determine the maximum monthly distribution charge that all prescribed high-cost distributors will charge their customers. In future years, this harmonized monthly charge, by design, cannot decrease as it adjusts to reflect the higher of either the lowest rate LDC in the program, or the maximum monthly charge of the previous year, as determined by the OEB.

Ontario Electricity Support Program (OESP)

OESP began on January 1, 2016 as a rate-payer funded program to provide relief to low income Ontarians who are struggling to afford their electricity bills. The OEB administers the program.

The Fair Hydro Plan committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.
March 23, 2017, the OEB issued a Decision and Order to end the OESP volumetric charge paid by all Ontario consumers on May 1, 2017 ($0.0011 per kilowatt-hour of power consumed). On April 10, 2017, Cabinet approved amendments to the OESP regulation (O.Reg. 314/15) to increase credit amounts by 50% and introduce new eligibility categories so more Ontarians can access the program. These changes came into effect on May 1, 2017.

As part of the OFHP, ENERGY has already completed the following legislative and regulatory changes on OESP:

CONFIDENTIAL

- Effective May 1, 2017, ENERGY completed a regulatory amendment to O. Reg. 314/15 to increase OESP credit amounts by 50% and expand eligibility criteria.

- Corresponding legislative amendments to section 79.2 of the OEBA were made to enable the program to shift from the rate-base to the tax-base once the rate-base pooled funding has been depleted. The intended approach involves proclaiming s.79.2 of the OEBA into force on a future date to be named by proclamation.

- These legislative amendments also provided authority for the Minister or the OEB to enter into an agreement with MCSS to provide services related to the administration of the OESP on behalf of SA clients, including data-sharing and information-sharing required to deliver OESP to SA clients. Along with ss. amendments to s. 79, the new sections 79.3 and 79.4, came into force on Royal Assent on June 1, 2017.

Implementation

MCSS will be responsible for implementing the proposed regulatory changes once an agreement has been entered into between the Minister and/or the OEB and MCSS, which were designed to support a strategy jointly developed by ENERGY, the OEB, and MCSS to meet the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery.

MCSS will be seeking Treasury Board approval for resources to implement these proposed changes in a separate request.

3.0 KEY CONTEXT

On June 1, 2017, the *Fair Hydro Act, 2017*, the legislation to enable the Ontario Fair Hydro Plan (OFHP) under the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) received Royal assent. The OFHPA will reduce the electricity bills of typical residential consumers by 25 per cent starting in summer 2017. Up to 500,000 small businesses and farms would also benefit.

OFHP also announced other measures to enhance business competitiveness, helping vulnerable consumers and reduce the cost of electricity over the longer term.

The Ministry's report back and update to TB/MBC focuses on the following OFHP initiatives:

1) Implementation of GA Refinancing:

CONFIDENTIAL

Under the *OFHPA*, a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Today's electricity consumers have been bearing disproportionate cost responsibility for the investments in developing the clean, modern and reliable electricity system that Ontario has today and that will continue to provide benefit to future generations. The legislation recognizes the long-term benefit of clean energy investments to more appropriately allocate costs into the future to account for long-term benefits.

Refinancing a portion of the GA would provide significant and immediate rate relief to electricity consumers that have been burdened with the costs of the necessary investments that have been made to decarbonize and modernize the province's electricity infrastructure. This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for or benefit from the province's multi-billion dollar investments in electricity infrastructure.

To implement GA refinancing and to mitigate the financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed the *Fair Hydro Act, 2017* which enables the OFHP under the *Ontario Fair Hydro Plan Act (OFHPA), 2017*, to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: On June 1, 2017, the *OFHPA* received Royal assent.

- Developed supporting regulations which further contribute to the implementation of the OFHP under the legislation;

    - One new regulation under the OFHPA, *Ontario Regulation 195/17 Fair Adjustment under Part II of the Act.* and one amendment to existing regulation under the Electricity Act, 1998 (O. Reg. 280/14, IESO: Eligible Investments and Borrowing) went to LRC/Cabinet on June 14, 2017; and

    - A further new proposed regulation will go to the June 27,2017 LRC/Cabinet.

CONFIDENTIAL

- Received accounting opinions from E&Y (OPG) and KPMG (IESO);

- Received independent advice regarding financing and legal requirements from TD Securities (OFA) and Blakes (ENERGY); and

- Launched a third party technical analysis project to assist with implementation of GA refinancing. Scope of work includes analysing the expected lifecycle of the existing generation infrastructure and related financial modeling of costs over an extended timeframe.

On June 27, 2017, to support implementation of OFHP, LRC / Cabinet will review the following regulation:

Creating a new Regulation ("General Regulation") to be made under the *Ontario Fair Hydro Plan Act*, 2017, which is Schedule 1 of the Fair Hydro Act, 2017.

- The proposed regulation supports key aspects of the OFHPA including:

    - Details around establishment and transfer of portions of the regulatory asset;
    - The establishment of the OFHPA-related deferral and variance account to be held by the Independent Electricity System Operator (IESO);
    - The definition and details regarding the "funding obligation" which relates to the recovery of moneys borrowed by OPG/financing entity to fund GA refinancing;
    - Methodology related to the calculation by the FSM of the Clean Energy Adjustment (CEA, i.e., the total amount payable by electricity consumers each reference period) including the communication of the CEA amounts to be collected to the OEB for its use in setting rates;
    - Determination of rates and amounts related to the recovery of the CEA under which regulated rate consumers must be invoiced and which must be used in the calculation of rates for non-regulated consumers;
    - Requirements for electricity vendors (the IESO, LDCs, retailers and unit sub-meter providers (USMPs)) in relation to the collection of amounts in respect of the CEA from electricity consumers;
    - The composition of the FSM's fees and the OEB's role in the review of those (i.e., the fees related to the ongoing operation of the FSM during the period of GA Refinancing);
    - Details related to the methodology to be used by the Minister in the calculation of the Fair Allocation amount (i.e. a calculation of the fair allocation of clean energy costs over time); and
    - Further criteria related to the development and implementation of the Financing Plan by the FSM.

CONFIDENTIAL

Financing, Accounting and Legal Risk Considerations / Mitigations

The Ministry was asked to report back to TBS/MBC with details on how financing, accounting and legal risks would be mitigated.

Financing

OFHPA Legislation

The purpose of the legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in the electricity system are allocated fairly among present and future generations of consumers. Costs to be allocated include clean and renewable generation facilities, conservation, demand management and energy efficiency programs.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the (GA), including:

- Fair Allocation Amount: A calculation and allocation of clean energy costs over time in proportion to clean energy benefits. It is expected that the calculation would lead to decreased rates in the near term with rates higher than forecast in the long term. The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager (OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister if prescribed by regulation.

- Fair Adjustment: Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018. Under the legislation, the OEB must determine the amount within 15 business days of the legislation coming into force. The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period May 1, 2018 to June 30, 2021.

- Clean Energy Adjustment: The mechanism to recover the under-collection of GA from eligible consumers during the recovery period. This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing costs. IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

The Ministry has prepared the legislation, recently passed regulation and supporting proposed regulation in close collaboration with key ministries (i.e., TB, MOF, AG and CO), agencies (i.e., OEB, IESO, OPG) and external legal and financial advisors.

CONFIDENTIAL

The legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recoverable.

The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year.

The regulations further support the legislation in terms of providing clarity on the roles of the Ministry, OEB, IESO, and OPG.

As reported in the TB/MBC submission of May 9, 2017, it is still possible that the full value of the Regulatory Asset may not be purchased. In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

In addition, the Ministry has worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

In particular, the legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:

- OPG issuances of subordinated debt to the Special Purpose Vehicle(SPV)/Trust representing up to 49% of total borrowing; and
- Conditional (springing) guarantees by the Province that will include a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).

Note: The ability to finance and the cost of financing will only be known with certainty once OPG receives the rating of the offering in July/August 2017, seeks short term financing in September/October 2017 and sells the initial offering on the market by the end of October 2017. These milestones are contingent on the creation of the SPV/Trust to facilitate the subsequent sale of the Regulatory Asset by IESO to the SPV/Trust.

<u>OPG Financing / OPG Equity Financing</u>

CONFIDENTIAL

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

As reported in the May 9, 2017 submission to TB/MBC, IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG SPV/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation and regulations enables refinancing of the GA.

The general regulation sets out principles, assumptions and further clarity on process for the development of the financing plan and the implementation of clean energy adjustments to recover amounts related to funding obligations incurred under the terms of the financing plan.

Purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;

CONFIDENTIAL

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

- It is anticipated that the initial equity injection would take place as early as June 2017.

In April 2017, the Ministry of Energy received approval for the creation of an operating asset ”OPG Share Purchase” and an increase in operating asset allocation for $1.1 billion. This approval was dependent on the passing of the legislation (i.e., the OFHPA that received Royal assent on June 1, 2017).

OPG will provide a two-year forecast of its equity requirements to the Ministry on annual basis, as part of OPG’s business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy’s concurrence process and are expected to be fiscally neutral.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province’s rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast (e.g., as a result of greater electrification,), the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.

- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don’t rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

<u>IESO’s Credit Facilities</u>

CONFIDENTIAL

As report in the May 9, 2017 submission to TB/MBC, IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current “line of credit” with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO’s contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

The Ministry of Finance (MOF) is seeking an OIC under CIPA to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2 billion. This change will allow the OFA to enhance IESO credit facility as necessary to assist with the timely and successful implementation of the OFHP.

Accounting

As reported in the TB/MBC submission of May 9, 2017, legislation to enable GA refinancing has benefitted from the review and input of IESO/KPMG, OPG/E&Y and OPCD/E&Y.

The legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.

Under the legislation, OEB will issue an “accounting order” to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. This satisfies accounting concerns regarding OEB oversight in the establishment of the Regulatory Asset.

IESO will effectively sell the “right to collect” deferred future revenue from ratepayers to OPG in return for cash proceeds.

CONFIDENTIAL

The legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement.

To recover its revenue shortfall, IESO will establish a Regulatory Asset that it would sell to OPG's SPV/Trust.

The general regulation provides further clarity on the process for establishing the asset and what costs are eligible for inclusion in the asset.

IESO / KPMG

As reported in the TB/MBC submission of May 9, 2017, the Ministry has worked closely with the Independent Electricity System Operator (IESO) and KPMG on the accounting considerations of GA Refinancing (i.e., legislation, applications of accounting standards/principles, minimizing consolidation risks and ability to establish a regulatory asset).

In particular, the legislation provides a structure that IESO and KMPG – in the accounting opinion they provided to IESO – believe meets the necessary accounting requirements. Key elements include:

- An IESO variance account created by the legislation that would be recognized as a "regulatory asset".

- An Ontario Power Generation (OPG) special purpose vehicle (SPV) / Trust that would not controlled by IESO and thus have no consolidation risk for IESO.

In addition, KMPG provided some commentary on the accounting requirement for the "derecognition" of the regulatory asset once it's sold to OPG SPV/Trust. KPMG advised that the regulatory asset should be derecognized upon transfer to the OPG SPV/Trust as IESO no longer has rights or obligations to the asset (i.e., the transformation from a regulatory asset to an investment asset).

OPG/ E&Y

As reported in the TB/MBC submission of May 9, 2017, the Ministry has worked closely with Ontario Power Generation (OPG) and E&Y, on the accounting requirements to enable GA Refinancing with respect to consolidation (i.e., legislation, applications of accounting standards/principles, establishing a special SPV / Trust).

The legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct

CONFIDENTIAL

business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust, additional work will be done through the regulations and supporting agreements/documents.

- OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.

- OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Based on the legislation, key operating conditions being addressed in regulations and supporting agreements/documents and no introduction of new conditions that would conflict with OPG's control of the SPV/Trust, E&Y concurs with OPG's assessment that the accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Legal

The legal risks flagged in the May 9, 2017 submission to TB/MBC have not changed.

In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:

The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

CONFIDENTIAL

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.

The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

Navigant Analysis

Navigant Consulting, Inc. has been retained to provide its assessment of the expected lives of clean energy asset, as well as a fair allocation of the costs of these assets over the expected lives.

Navigant has focused on the costs and benefits of procuring natural gas, wind, and solar generation, as well as costs associated with conservation and the early retirement of Ontario's coal assets.

The Navigant scope of work includes:

- Research and analysis to ascertain the likely service lives of gas generating, solar and wind facilities from a largely technical point of view;
- Analysis related to the expected cost of extending the service lives of facilities under contract with IESO; and
- Determining the annual cost of a refinanced contract that provides the same value as each generator's actual contract but is extended over the expected life of each generator.

Ontario ratepayers currently pay for the costs of its gas, wind, and solar generators over the life of power purchase agreements (PPAs), which generally run for twenty years. Provincial ratepayers also pay for conservation procurement as costs are incurred, and over the period of 2009-2014 paid for the early shutdown of provincial coal plants on an accelerated schedule.

CONFIDENTIAL

Given that the clean energy and conservation benefits associated with the assets occur over the entire of life of the asset, there is an opportunity to define an alternative financing methodology that better aligns the costs with benefits.

Navigant is in the process of finalizing its work.

2) Social Programs: PLACEHOLDER FOR SNAP UPDATES

Program Design

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application-based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.

OESP credits vary by income level and family size, and there are two credit scales that include:

- The basic program credit originally ranged from $30/month to $50/month. The new credit amounts came into effect May 1, 2017 and range from $35/month to $75/month.

- An enhanced credit, which originally ranged from $45/month to $75/month for consumers that are either Indigenous, use electric heat or use certain electrically intensive medical devices. The new credit amounts came into effect on May 1, 2017 and range from $52/month to $113/month.

Ontario's Fair Hydro Plan (OFHP) committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake. Recently approved legislative changes have enabled the transition of the program to the tax base, which will be enacted by a subsequent proclamation and associated regulatory changes.

In the meantime, amendments to the OESP regulation (O. Reg. 314/15) are being proposed in order to enable alignment of OESP delivery with social assistance programs delivered by MCSS.

The proposed amendments to O. Reg. 314/15 will facilitate the processing of OESP applications by MCSS on behalf of SA clients pursuant to an agreement with the Minister or the OEB, and help meet the government's goal of substantially increasing uptake in the OESP.

CONFIDENTIAL

Roles and Responsibilities

Ontario Electricity Support Program

The OEB will continue to deliver the OESP under the current legislative framework until the variance account is depleted. When legislative changes to shift the program from the rate base to the tax base are proclaimed, the OEB will continue to administer the program, but certain decision making responsibilities and oversights will shift to the Minister of Energy.

Second, OEB and its OESP delivery consultant – ICF Consulting – will help MCSS to expeditiously prepare for implementation by providing training materials and technical support for MCSS system changes. The amount of the original contract between ICF and the OEB is $12 million. Cost impacts are expected to be minimal and are covered by the OEB's existing authorities to cover administration costs related to the OESP using the OESP variance account.

MCSS will be responsible for implementing the proposed regulatory changes once an agreement has been entered into between the Minister and/or the OEB and MCSS, which were designed to support a strategy jointly developed by ENERGY, the OEB, and MCSS to meet the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery.

The IESO will continue to manage payments to utilities, unit sub-meter providers, and the OEB in relation to OESP credit delivery and program administration costs. When legislative changes are proclaimed, IESO will begin reporting costs to the Ministry to support forecasting and audit.

4.0 BACKGROUND

Legislation to Implement Ontario's Fair Hydro Plan

On May 11, 2017, the government introduced Bill 132, *Fair Hydro Act, 2017* (FHA) which is comprised of two Schedules:

- Schedule 1 – is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* (OEBA); and

- Schedule 2 – includes the electricity social program-related amendments to the *Ontario Energy Board Act, 1998.*

CONFIDENTIAL

On May 31, 2017, the Bill passed third reading and received Royal Assent on June 1, 2017.

Legislation to Implement GA Refinancing

To enable implementation of GA refinancing and mitigate financing, accounting and legal risks, the *Ontario Fair Hydro Plan Act, 2017* outlines:

- Roles and responsibilities for the OEB, IESO, OPG and the Province;
- A detailed Preamble, Purpose and Definitions;
- Details with respect to Fair Adjustment, Clean Energy Adjustment, Implementation (i.e., Financial Services Manager, Fair Allocation Amount, Financing Plan), Regulatory Asset and Investment Asset;
- Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
- Amendments to other acts (i.e., *Electricity Act* and *Ontario Energy Board)*.

The legislation defines the mechanisms and framework that would achieve the refinancing of the GA.

The Ministry has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing in the development of the legislation.

To support the implementation of GA refinancing under the *Fair Hydro Act, 2017*, the Ministry has developed supporting regulation:

- Creating a new Regulation ("General Regulation") to be made under the Ontario Fair Hydro Plan Act, which is Schedule 1 of the Fair Hydro Act, 2017.
- The proposed regulation supports key aspects of the OFHPA including:
    - The details around the establishment and transfer of portions of the regulatory asset;
    - The establishment of the OFHPA-related deferral and variance account to be held by the Independent Electricity System Operator (IESO);
    - The definition and details regarding the "funding obligation" which relates to the recovery of moneys borrowed by OPG/SPV to fund GA refinancing;

CONFIDENTIAL

- Methodology related to the calculation of the Clean Energy Adjustment (i.e., the total amount payable by electricity consumers each reference period);
- Determination of rates and amounts related to the recovery of the Clean Energy Adjustment under which regulated rate consumers must be invoiced and which must be used in the calculation of rates for non-regulated consumers;
- Requirements on the IESO, LDCs, retailers and unit sub-meter providers (USMPs) in relation to the collection of amounts in respect of the Clean Energy Adjustment from electricity consumers;
- OEB's role in the review of fees incurred by Financial Service Manager (i.e., the fees related to the ongoing operation of the Financial Services Manager during the period of GA Refinancing);
- Details related to the methodology to be used by the Minister in the calculation of the Fair Allocation amount (i.e. a calculation of the fair allocation of clean energy costs over time);
- Further criteria related to the development and implementation of the Financing Plan by the Financial Services Manager.

Ontario Electricity Support Program (OESP)

The OESP launched on January 1, 2016. By the end of May 2017:

- Almost 200, 000 have been enrolled in the program, which is approximately 35% of all potentially eligible low-income customers in Ontario.
- Over $60 million in credits have been provided to vulnerable consumers.
- 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.

5.0 TIMING

Under the *OFHPA*, a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Some of Ontario's Fair Hydro Plan commitments for the OESP came into effect on May 1, 2017 (e.g., removal of the OESP charge from customer bills; expanding credit amounts and program eligibility). Remaining changes associated with moving the program from the rate-base to the tax-base will be proclaimed at a later date when the OESP variance account is depleted.

CONFIDENTIAL

Additional regulatory amendments needed to implement this legislative change will come into effect on the same date.

Further work to enable GA refinancing to be undertaken Summer/Fall 2017:

- Minister to determine the Fair Allocation Amount for each reference period;
- OPG/SPV to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount;
- IESO to record deferral amounts and establish the regulatory asset;
- OPG/SPV to begin purchasing of investment asset; and
- OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests.

6.0 FINANCIAL IMPACT

1) GA Refinancing:

The General regulation would support the implementation of GA refinancing, including methodology, principles and assumptions related to various aspects of the initiative (e.g., fair allocation amount). By achieving the accounting treatment described in this, and previous, submissions, the initiative is not expected to have a financial impact.

2) Social Programs:

Cost impacts for the amending O. Reg. 314/15 are expected to be negligible. There is significant overlap between the financial eligibility for the OESP and other social assistance programs, resulting in very few occurrences where SA clients do not meet the current OESP eligibility requirements.

As reported in the TB/MBC submission of May 9, 2017 and as approved in the TB/MBC submission of March 1, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Ontario Electricity Support Program	140,000,000

The cost forecasts for these programs were made through a combination of Ministry analysis that utilized consumption data and local distribution

CONFIDENTIAL

company rates to estimate program costs, and information provided to the Ministry by the Ontario Energy Board. Cost forecasts are subject to some uncertainty surrounding consumer uptake, future consumption levels, and future rates as set by the OEB.

ENERGY will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $106 million as of May 2017. These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs. Due to the potential range in costs of the OESP, which will depend on program uptake and any costs associated with supporting increased participation, the set allocation is required despite the variance account.

Per the Regulations, the Ministry has the authority to request social program costs forecasts from the OEB.

7.0 STAKEHOLDER ANALYSIS

Stakeholder	Comments
Eligible Electricity Consumers	• As a result of OFHP, eligible electricity consumers will welcome the immediate reduction in electricity bills that they will experience in the short to medium term.
Electricity Agencies	• In the development of legislation to enable implementation of OFHP, the Ministry has been working closely with OEB, IESO and OPG and their independent advisors.
Local Distribution Companies (LDCs)	• The Ministry hosted LDC workshop sessions on March 16, April 19, and May 17, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation. The Ministry has also held separate engagements with LDCs in particular to the social programs.
Government (MCSS)	• ENERGY has been engaging with MCSS and the OEB for several months to develop a strategy for meeting the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery. The joint strategy instructed the recent amendments to the OEBA, and the changes to O. Reg. 314/15 that are being proposed in this submission.

8.0 RISK ASSESSMENT AND MITIGATION – UPDATES

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • In order to provide financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. **<u>Update:</u>** • Work is ongoing to finalize a draft term sheet that would serve as the basis for the Master Subscription Agreement between OPG/ENERGY and OFA. In addition, OFA and ENE to develop Service Level Agreement for monthly cash management services.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry, IESO, OPG and other ministries have worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			debt, with the remaining 49% being provided by OPG as subordinated debt. U • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line. **Update:** • The legislation and proposed general regulation were developed with input from third-party financiers (i.e., dealers) to ensure that the *OFHPA* enables the refinancing of the Global Adjustment (GA). • OPG is continuing to work through the mechanics of securing financing (e.g., engaging rate agencies, etc). • In addition, in order to provide assurances to those with claims against the "Financing Entity" (e.g., 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 IESO are carried out including obligations related to collecting and remitting clean energy adjustments. Working is ongoing.
Managing Interest Cost Risks	M	H	• OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%). **Update:** • The legislation and proposed general regulation were developed with input of third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the GA

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			• The provincial guarantee as set out in legislation should provide comfort to dealers, thereby increasing the likelihood of achieving more favourable interest rates. • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
Provincial Guarantee is Triggered	L	H	• The legislation sets out that the province could provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also enables the Province to: o Through the Ministers of Energy and Finance upon approval by Lieutenant Governor in Council, agree to guarantee any debts and obligations **<u>Update:</u>** • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
IESO Failure to Establish a Regulatory Asset / Maintaining IESO Financial Viability	L	H	• Under the legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish it as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. • IESO requires short-term financing to be in place for initial and expected monthly timing differences, or in the event that the

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			OPG SPV, at any time, does not purchase a portion of the regulatory asset. **<u>Update:</u>** • IESO has received an accounting opinion from KPMG that concurs with IESO's view that it has the ability to establish the regulatory asset. • In addition, OFA is planning to increase IESO's credit facility to support its role in implementing the OFHPA. OFA is seeking an OIC that would authorize the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. • Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax. • The legislation attempts to mitigate the risks identified above by requiring that

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			the costs moved into the future align with the benefits that future rate payers will receive. To create the flexibility to achieve this requirement, the amounts of the costs and benefits will not be enshrined in the legislation. **<u>Update:</u>** • The legislation was designed to mitigate this risk. • The Fair Allocation Amount, the process for which is further clarified under general regulation, will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP) *3)*			
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting. • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program. • Social program regulations include provisions to require the IESO and the OEB to provide the Ministry with information required to update cost projections based on up-to-date figures.

9.0 JURISDICTIONAL ANALYSIS

CONFIDENTIAL

GA Refinancing approached outlined in the legislation is modelled on frameworks used in the United States (e.g., Duke Energy), where utility debt is financed by selling it to investors with recovery from ratepayers over time.

The Ministry conducted no jurisdictional analysis related to the expansion of social program funding for OESP as the structure of Ontario's electricity sector, and thus the delivery of these benefits, is unique.

10.0 PERFORMANCE MEASURES

With respect to OESP, ENERGY will continue to track the performance of the OESP program with a focus on collecting metrics related to program uptake.

The Ministry and the OEB have engaged with the Behavioral Insights Office at the TBS to consider ways to increase program participation. Discussions are ongoing.

12.0 RECOMMENDATION

1) The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on the following:

    i. Implementation of Global Adjustment (GA) Refinancing; and

    ii. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP).

CONFIDENTIAL

TREASURY BOARD / MANAGEMENT BOARD OF CABINET
REQUEST ASSESSMENT NOTE

Ministry:	Energy
Meeting Date:	June 27, 2017
Agenda Class:	Major Item
Last reviewed by: TB/MBC – June 13, 2017	**Tracking to: Fast Track** LRC/Cabinet – June 27, 2017

SUBMISSION TITLE:	Report back on Ontario Fair Hydro Plan – Regulations Part 2 of 2

I. DECISION BEFORE THE BOARD

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding Cabinet for approval

II. RECOMMENDATIONS:

• Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to for approval including: o Global Adjustment Refinancing; o Ontario Electricity Support Program (OESP)	*Receive*
Note key aspects and program parameters of the proposed regulations	*Note*
Recommend the proposed regulations proceed to Cabinet for approval	*Recommend*
• Direct the Ministry to report back to TB/MBC on: o Details of its overall strategy to substantially increase OESP enrolment (note: includes increasing Social Assistance clients enrolled in OESP).	*Direct*

III. FINANCIAL SUMMARY

$ Millions	**2017-18**	**2018-19**	**2019-20**
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base: Global Adjustment Refinancing*	0.0	0.0	0.0
Electricity social programs – OESP ^	140.0	261.0	325.0
Offset Recommended	0.0	0.0	0.0
Total Potential Fiscal Impact	0.0	0.0	0.0

*As part of Global Adjustment Refinancing, an Operating Asset for $1.1B for OPG Share Purchase was included as part of 2017 Budget.

^Multi-year appropriation approved as part of the 2017 Budget.

IV. KEY COMMENTS AND CONSIDERATIONS

In March 2017, the Ministry received Treasury Board/Management Board of Cabinet (TB/MBC) approval for electricity price mitigation measures that support a 25% electricity bill reduction on average (including the 8% Ontario Rebate For Electricity Consumers announced in 2016). The Ontario Fair Hydro Plan (OFHP) was announced on March 2, 2017.The plan includes refinancing a portion of the Global Adjustment (GA) and helping vulnerable electricity consumers ("social programs") amongst other initiatives for residential consumers (see Appendix C). The Ministry was directed to report back to TB/MBC on a number of items including the proposed legislation required to enact the initiatives under

OFHP (see Appendix D).

Report backs to date include:

- May 9th 2017, the Ministry provided an implementation update on the OFHP and the enabling legislation. TB/MBC recommended the proposed legislation proceed to Cabinet for approval and Ontario's *Fair Hydro Act, 2017* ("the Act") received Royal Assent on June 1, 2017. The Ministry was directed to report back to TB/MBC on a number of items including the proposed regulations required to support the implementation of the OFHP (see Appendix E).

- June 13, 2017, the Ministry provided the first of two updates on next steps in implementation of the OFHP, specifically providing the proposed regulations that would establish and amend the necessary regulations under the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, *Ontario Rebate for Electricity Consumers Act, 2016*, and the *Fair Hydro Plan Act, 2017*.

Proposed Regulations

The current submission before the Board is the second bundle of proposed regulations supporting implementation of the OFHP and would establish and amend regulations under the *Ontario Energy Board Act, 1998 and the Ontario Fair Hydro Plan Act, 2017*, related to GA Refinancing and the Ontario Electricity Support Program (OESP).

Implementation of Global Adjustment (GA) Refinancing

On March 2, 2017, as part of OFHP, the government announced that a portion of the GAs would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

As Part 2 of the regulations report back (Part 1 was before the Board June 13, 2017), The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the GA by ensuring that the mechanisms for refinancing of GA as set out under the *OFHPA* are in place in time for the first debt offering in fall 2017:

- Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG), OEB, and IESO in relation to the refinancing of GA
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM)
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account
- Provide further criteria related to the development and implementation of the financing plan by the FSM
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

IESO Credit Facility

The Ministry of Energy indicates the IESO is responsible for financing short to medium term funding shortfalls in the implementation of Ontario's Fair Hydro Plan. This was noted by the Board as part of the legislative package brought on May 9, 2017.

To support this, the Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2B, which will provide the OFA with the capacity to provide additional loans to the IESO in order to fulfil the commitments under the Fair Hydro Act, 2017. The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

The Ministry indicates further work to enable GA refinancing will be undertaken Summer/Fall 2017:

- Minister to determine the Fair Allocation Amount for each reference period;
- OPG/SPV to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount;
- IESO to record deferral amounts and establish the regulatory asset;
- OPG/SPV to begin purchasing of investment asset; and
- OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests.
-

(Energy, perhaps additional section outlining what will regularly be coming before TB/MBC once OFHP is underway)

Delivery of Electricity Social Programs:

Ontario Electricity Support Program

The ministry is proposing amendments to the existing Ontario Electricity Support Program (OESP) regulation that will enable the Ministry of Community and Social Services to help new and existing social assistance clients to enroll in the OESP.

The amendments are in support of efforts to increase enrollment by reducing application burdens on target populations and enable the development of automatic OESP enrollment procedures for some populations already receiving other government programming (in this case already receiving social assistance).

- MCSS and Energy intend to bring a temporary resources request to the July 25, 2017 TB/MBC meeting. Early indications suggest about 50 temporary FTEs within MCSS and Energy providing the funding to support increasing enrolment of Social Assistance clients onto OESP.
- The March 1, 2017 Board Minute included direction to pursue additional measures to substantially increase OESP take-up. The Ministry indicates OESP enrolment is about 35% of the targeted low-income population (about 575,000 target population). Stats provided by MCSS indicate just over 109,000 Social Assistance clients being eligible for OESP (as they receive hydro bills directly), but MCSS does not know the portion of the 109,000 that are already OESP recipients.
    - As part of the July 2017 joint submission from MCSS and Energy, Energy should provide commentary on its overall strategy to move OESP towards 100% participation (This engagement of MCSS would be part of the strategy).

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account to government funding. This timing is consistent with previous submissions and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Analysis/Risks

TBS staff noted as part of the May 9, 2017 submission focused on OFHP legislation indicated that financial, legal, and accounting external opinions and assessments of the planned approach to GA refinancing are supportive of the Ministry's intended plan for implementing Ontario's Fair Hydro Plan, noting the opinions and assessments must be revisited once key implementation details are finalised (e.g. draft legislation, regulations, special purpose vehicle documents, terms of conditions within various other agreements).
Future reassessments, Navigant's analysis of expected lifecycle for existing generation infrastructure (key), and other factors such as Ontario electricity demand, interest rates in the medium to long-term, and the rate of inflation may contribute to fiscal plan implications emerging over time.

This assessment has not changed with the current submission. The Ministry indicates Navigant's analysis is still pending along with finalized details for elements such as the special purpose vehicle documents, and terms/conditions within various other agreements.

Financial

- The multi-year fiscal profile identified by the Ministry as part of this submission (below) are consistent with the voted appropriation approved for the Ministry through the 2017 Budget. Cost forecasts for these programs were made through a combination of Ministry analysis that utilized consumption data and local distribution company rates to estimate program costs, and information provided to the Ministry by the OEB.

$M	2017-18	2018-19	2019-20	2020-21
Ontario Electricity Support Program (OESP)	140	261	325	375

- The Ministry notes it is currently assessing the potential impact of the Hydro One rate application and will report back to TB/MBC with the potential out-year impacts of this rate application.
- The allocations for the social programs are based on a number of variable inputs such as program uptake, electricity market conditions and forecasting models that are subject to change and represent an on-going fiscal risk. Sensitivity analysis will allow the government to develop a risk based outlook to understand potential fluctuations in the cost of these initiatives.
- There are no sunset dates for the programs and it is important to understand the full cost of the initiatives (including electricity price projections) for the longer term, beyond the year 2021-22.
- Lastly, further information is required on the detailed consumer impacts with assumptions and methodologies specified and documented to support better decision making and achieving the intended program goals.

Accounting

- The fiscal impact associated with the OFHP will be determined by how the series of complex transactions are accounted for on the Province's Consolidated Financial Statements which are prepared in accordance with public sector accounting standards established by CPA Canada. A number of details yet to be finalized through the regulations and various commercial agreements will impact the final accounting analysis.

- While accounting for the social programs and the Affordability Fund as transfers is fairly straightforward, the accounting for the GA mechanism is relatively more complex. To mitigate accounting risk associated with the latter, both the IESO's and OPG's external auditors have provided independent accounting opinions on the appropriate accounting for elements of the OFHP structure related to each entity, contingent on finalization of regulations and commercial agreements. Based on the audited financial results for these organizations, supported by the anticipated accounting opinions, the Office of the Provincial Controller will prepare the Province's consolidated financial statements based on public sector accounting standards.
- At this time, the Auditor General (AG) has not identified any concerns related to the accounting for the social programs or the Affordability Fund; however, the AG has voiced concerns regarding the planned accounting treatment for the OFHP as related specifically to the GA component which is expected to impact the Province's financial results for the first time in 2017-18. The AG has also publicly communicated her opposition to a change in the IESO's accounting policy to reflect rate regulated balances on its books. The Province supports the IESO's accounting treatment as more fairly presenting the economic substance of the entity's market-related activities.
- The AG is currently reviewing the Province's accounting analysis related to the Affordability Fund which reflects a $100M transfer payment to be reflected in the Province's 2016/17 Public Accounts.
- If the AG does not concur with the Province's accounting treatment, including the change in accounting treatment by the IESO, the AG may provide a qualifed audit opinion on the Provinces' financial statements in the Public Accounts.

Legal

- The ministry has stated the legal risk remains the same as identified at the May 10, 2017 Cabinet meeting regarding the *Fair Hydro Plan Act, 2017*, including and related to:

GA Refinancing

- In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.
- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.
- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

The Ministry has provided an update to key risks including mitigation strategies (see Appendix G). The overview of strategic risks, from May 9 2017 TB assessment note, has been brought forward providing context for the more operational nature of Appendix G.

In addition to the risks cited in Appendix G in the implementation of the OFHP, a number of supporting arrangements are being sought by the IESO and OPG, including the following:

Indemnities for OPG (Ontario Power Generation) and IESO

- OPG and IESO have requested indemnities from the Province for their respective Directors, Officers and employees in relation to their roles in the implementation of the OFHP. Ministry of Energy staff are putting together a section 28 approvals submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO.sw
    - IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
    - Draft materials from Energy state that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
    - Energy has confirmed in its draft request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.
- As currently proposed, the Minister of Finance will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

Provincial Support Agreement or Provincial Guarantee Agreement

- As part of the OFHP and in order to provide support to those with claims against the Financing Entity (i.e., planned to be the OPG Trust) and with the ultimate objective of providing the highest possible credit ratings (and corresponding impact on interest costs to the ratepayers), the Province has been asked to provide both a Service Guarantee and a Performance Guarantee to support obligations of the IESO and the debt instruments issued by the Financing Entity.

Additional Report Backs

The Ministry has been asked to provide an update on outstanding report backs from OFHP related previous submissions. Appendix H contains the table sent to the Ministry, update is still pending.

As indicated earlier, this assessment note recommends Energy provide, as part of the joint submission with MCSS tracking to July 25, 2017 TB/MBC, an overview of its strategy to significantly increase OESP enrolment.

Name of analyst:	James Strang/ Afshin Malekzadeh with input from OPCD, OFA and CoE	**Phone number:**	416-327-2071
Date:	June 24, 2017	**Log number:**	
Branch / Division:	GGPR / PEMD / Treasury Board Secretariat		

APPENDIX A: PROPOSED MINUTE

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Ontario Electricity Support Program (OESP)

a) To enable Ministry of Community and Social Services to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table.

On-Reserve First Nations Delivery Credit (FNDC)

a) A correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Implementation of Global Adjustment (GA) Refinancing:

a) Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
b) Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
c) Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
d) Provide further criteria related to the development and implementation of the financing plan by the FSM;
e) Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

ii) Recommend the following proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New General Regulation to be made under Part I of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*
b) Amendments to O. Reg. 197/17 (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA)

c) Amendments to O. Reg. 314/15 (Ontario Electricity Support Program) to be made under the OEBA

iii) Direct the Ministry to report back to TB/MBC with details of its overall strategy to substantially increase OESP enrolment, as part of the pending joint submission with MCSS to increase Social Assistance clients enrolled in OESP.

APPENDIX B: FINANCIAL TABLES

FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE					TABLE B1
		Fiscal Plan Basis			*Appropriations Basis*
$ Millions		**2017-18**	**2018-19**	**2019-20**	**2017-18**
Initiative cost		0.000	0.000	0.000	
Expense changes:					
	Oper	0.0000	0.000	0.0000	0.0000
	Oper	0.0000	0.0000	0.0000	0.0000
Total Fiscal Impact		**0.0000**	**0.0000**	**0.0000**	**0.0000**

APPENDIX C: OFHP OVERVIEW

Ontario Rebate for Electricity Consumers

The *Ontario Rebate for Electricity Consumers Act, 2016* will reduce electricity costs by 8 per cent on the amount before tax, an average savings of about $130 annually or $11 each month, for about five million residential consumers, farms and small businesses.

Eligible rural electricity ratepayers will receive additional relief, decreasing total electricity bills by an average of $540 a year or $45 each month.

Commercial, institutional and industrial ratepayers would also benefit from up to 34 per cent lower electricity costs through the expansion of the Industrial Conservation Initiative.

Details:

- The province is reducing costs for eligible rural ratepayers by providing additional funding to the Rural or Remote Rate Protection (RRRP) program.
- The Industrial Conservation Initiative (ICI) provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by up to one-third. Ontario intends to expand ICI to help reduce cost pressures on the electricity system and enable more consumers to reduce their electricity bill by up to one third.
- Ontario has removed the Debt Retirement Charge from residential electricity bills and introduced the Ontario Electricity Support Program (OESP) to provide a monthly credit to low-income households who have applied and meet the eligibility requirements to help reduce electricity costs.

Fair Hydro Act

The *Ontario Fair Hydro Act, 2017* reduces electricity bills for all residential consumers and as many as half a million small businesses and farms, starting this summer. Lower-income Ontarians and those living in eligible rural and northern communities will receive even greater reductions, as much as 40 to 50 per cent. As part of this plan, rate increases will be held to the rate of inflation for four years.

These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills. Taken together, these changes are delivering the largest reduction to electricity rates in Ontario's history. To facilitate these immediate savings, the legislation:

Details:

- Enables the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) to work together to spread out the costs of Ontario's clean energy investments over a longer period of time, which ensures that the costs of these investments are allocated fairly among current and future ratepayers. This will be accomplished through refinancing a portion of the Global Adjustment (GA), resulting in significant and immediate rate reductions.
- Modifies and broadens the Ontario Electricity Support Program (OESP) to expand benefits and ensure it is funded by government instead of ratepayers, reducing bills for all.
- Enhances the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to a total of approximately 800,000 customers and shift costs from ratepayers to provincial revenues. The enhancement will benefit customers served by local distribution companies (LDCs) with the highest distribution rates. These savings will begin July 1, 2017.
- Provides on-reserve First Nations households serviced by licensed distributors with a 100 per cent credit of the delivery line on their monthly electricity bills, starting July 1, 2017.

APPENDIX D: PREVIOUS TB/MBC MINUTE (MARCH 1, 2017)

Approve electricity rate mitigation actions that support up to a 25% electricity bill reduction (including the 8% reduction announced in 2016) for an average household in 2017.

In this regard, the Board:

i. Direct the Ministry of Energy to implement electricity rate mitigation for all electricity consumers eligible to be billed under the Ontario Energy Board's Regulated Price Plan (RPP) and any other consumers who would be eligible for RPP if their electricity account was with a licensed distributor by:

   a) Subject to completed legal, accounting and financing risk assessments, refinance the Global Adjustment (GA) in order to partially defer RPP-eligible ratepayer GA costs by reducing projected after-tax electricity costs for a typical residential customer consuming 750kWh per month in 2017 by about 16%. Total projected bill increases will be kept in line with CPI until the end of 2021. From 2022 onwards, bills will increase at a rate that ensures gradual recovery of the accumulated debt by 2048, with escalation in subsequent years set above Consumer Price Index (CPI) in order to ensure that bill increases due to repayments are capped at around 10% of the total bill.

   b) Direct the Ministry to report back to TB/MBC by Spring 2017, prior to going to LRC with any legislation, on the approach to refinance Global Adjustment , including, but not limited to:

      - Formal accounting opinions from OPG and IESO auditors.
      - Completed legal, financing and accounting risk assessments. Assessments to include, but not limited to proposed legislation, technical aspects such as Eurig analysis, and risk to borrowing (in discussion with the OFA).
      - Report on the multi-year profile of GA smoothing, identifying specific assumptions.
      - Report on sensitivity analysis completed as assumptions vary, such as under different recovery rates and periods.
      - Overall risk mitigation plan addressing completed legal, accounting and financing risk assessments.

   c) If a non-fiscal mechanism cannot be established:
      1. Direct the Ministry to report back to Cabinet and TB/MBC with options for achieving a comparable level of electricity rate mitigation in the most cost effective way, in order to minimize the impact on the province's fiscal plan.
      2. Note costs to government of proceeding if cost of refinancing of Global Adjustment is recognized as an expense in the fiscal plan of up to $2,534,000,000 in 2017-18, $2,668,000,000 in 2018-19, $2,942,000,000 in 2019-20, $3,420,000,000 in 2020-21 and $3,232,000,000 in 2021-22.

ii. Broadening the Rural or Remote Rate Protection (RRRP) program to mitigate distribution charges for customers of Local Distribution Companies (LDC) with some of the highest distribution rates, and moving the program from a ratepayer funded program to a government funded program beginning in 2017, including:

   a) Harmonizing distribution cost for customers with the highest distribution rates (Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service

territory) and Northern Ontario Wires Inc) at the lowest distribution rate paid by the average consumer of the LDCs noted by fall 2017.

b) Note costs estimated at up to $459,000,000 in 2017-18, $472,000,000 in 2018-19, $484,000,000 in 2019-20, and $497,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to broaden RRRP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the broadened program now government funded
- Report on and assessment of impacts of consolidation of LDCs
- Assessment of distribution rates and implications for the program

iii. Expanding every benefit level of the Ontario Electricity Support Program by 50%, moving the program from a ratepayer funded program to a government funded program beginning in 2017 and pursuing additional measures to substantially increase take-up.

a) Note costs estimated at up to $186,000,000 in 2017-18, $261,000,000 in 2018-19, $325,000,000 in 2019-20, and $375,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

c) Direct the Ministry to work Treasury Board Secretariat (Behavioural Insights Unit, Centre of Excellence for Evidence-Based Decision Making) to accelerate/ maximize program uptake.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to expand OESP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Identify eligibility criteria, and refinements being made.
- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the expanded program now government funded.

iv. Establishing a new government funded Affordability Fund to provide energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs and who have difficulty paying their electricity bills.

a) Approve to commit up to $200,000,000 on a multi-year basis to support the Affordability Fund.

b) Direct the Ministry to report back to TB/MBC with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

v. Establishing a new province-wide government funded program beginning in 2017 that would eliminate the delivery charge for First Nations customers on reserve.

a) Note costs estimated at up to $20,000,000 in 2017-18, $20,000,000 in 2018-19, $20,000,000 in 2019-20, and $20,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

vi. Expanding the Industrial Conservation Initiative (ICI) by reducing the eligibility threshold to 500kW to enhance competitiveness for Class B manufacturers beginning July 2017.

a) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, results achieved to date versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vii. Direct the Ministry:

a) To work with Treasury Board Secretariat and the Ministry of Finance on the development of a comprehensive risk-based costing, including forecast models and sensitivity tests on assumptions and financial estimates, for the electricity mitigation initiatives.

b) To report back to TB/MBC through regular updates including quarterly reports and the 2018-19 Program Review, Renewal and Transformation (PRRT) on the status of implementation, and revised out-year expenditure requirements if applicable.

c) To continue to work with the Ontario Energy Board, the Independent Electricity System Operator and Ontario Power Generation, through the Long-Term Energy Plan 2017, to further reduce electricity rates across the system.

d) To work with the Ministry of Finance, Treasury Board Secretariat, Cabinet Office and Office of the Premier on an integrated communications strategy.

APPENDIX E: PREVIOUS TB/MBC MINUTE (MAY 9, 2017)

Receive a report back providing an update on current implementation status, including proposed legislation, of the Ontario Fair Hydro Plan, previously at TB/MBC March 1, 2017 and announced on March 2, 2017.

In this regard, the Board:

i) Note that the proposed Fair Hydro Act, 2017, includes:

Electricity Social Programs:

a) Establishment of a First Nation Delivery Credit for On-Reserve Consumers, funded from voted appropriations.
b) Establishment of new distribution rate protection program to eligible residential customers served by LDCs with the highest distribution costs, funded from voted appropriations.
c) Shift from costs recovered from ratepayers to funding out of voted appropriations for Ontario Electricity Support Programs.
d) Delayed proclamation for OESP once proposed amendments are passed until the IESO variance account for the program is close to wound down.

Global Adjustment Refinancing:

a) Establishes the fair allocation adjustment that gives the relief to certain specified consumers during the period July 1, 2017 to June 30, 2021 to ensure intergenerational fairness.
b) Requirement for future consumers to pay the clean energy adjustment that backs financings.
c) Sets out that the Financial Services Manager (OPG) prepares the Financing Plan establishing when a funding obligation should be incurred so that the OPG entity can raise money to acquire the Investment Interest.
d) Establishes the LGIC's power to authorize the Ministers of Finance and Energy to guarantee and indemnify any debts, obligations, securities or undertakings associated with the investment interest.
e) Sets out how the regulatory asset will be determined and how it can be converted into the investment asset, and the investment asset rights.
f) Sets out that security interests can be granted in investment interests in the investment asset.

ii) Recommend the proposed Fair Hydro Act, 2017 to proceed to Cabinet for approval.

iii) Note a new credit facility is being sought by the IESO from the Ontario Financing Authority to ensure that it has the flexibility to finance clean energy costs if for some reason the OPG Trust, at any time, does not purchase any portion of the deferred Global Adjustment amounts payments. An Order in Council to allow the Ontario Financial Authority to provide an expanded credit facility will be requested.

iv) Direct the Ministry of Energy to work with Treasury Board Secretariat and the Ministry of Finance/Ontario Financing Authority and report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments.

In this regard, direct the Ministry to:

a) Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different

demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.

b) Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.

c) To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.

d) To report back with updates to risk mitigation strategies that address key financial and operational risks.

v) Note the following outstanding report back requirements from March 1, 2017 minute:

a) Broadening RRRP – Direct the Ministry to report back to TB/MBC in 2017-18 on the effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
- Establishing program performance management framework including targets for the broadened program now government funded
- Report on and assessment of impacts of consolidation of LDCs
- Assessment of distribution rates and implications for the program

b) OESP – Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Identify eligibility criteria, and refinements being made.
- Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
- Establishing program performance management framework including targets for the expanded program now government funded.

c) Affordability Fund – Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

d) On-Reserve First Nations Delivery Charge – Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

e) Industrial Conservation Initiative – Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vi) Approve the Ministry to fund a media buy plan with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In this regard,

a) Note the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

b) Note the Ministry of Energy will return to request a transfer of funds of up to $2,500,000 in 2017-18 to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to recover costs for the public education campaign.

APPENDIX F: PREVIOUS TB/MBC MINUTE (JUNE 13, 2017)

Receive the first of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

a) Provides for a fixed monthly credit ($60.50), replacing the existing prescribed annual amount and making the escalating factor unnecessary; and,
b) Sets out a process that the Ontario Energy Board (OEB) will utilize to determine the maximum monthly distribution charge that all prescribed high-cost distributors will charge their customers; and,
    1) Sets out the proposed distributors as Atikokan Hydro Inc.; InnPower Corporation; Chapleau Public Utilities Corporation; Sioux Lookout Hydro Inc.; Northern Ontario Wires Inc.; Lakeland Power Distribution Ltd. (Parry Sound Rate Zone); Algoma Power Inc. (residential); and, Hydro One Networks Inc. (Low & medium density classified customers).

On-Reserve First Nations Delivery Credit (FNDC)

a) Defines eligibility as being restricted to those residential rate class First Nations customers who are members of a band as defined under the federal Indian Act;
b) Eliminates the delivery charge, or monthly service charge for those customers served by Local Distribution Companies (LDCs) that do not have a delivery charge, for on-reserve residential First Nations customers; and,
c) Defines eligibility currently affects 11 LDCs serving on-reserve consumers: Algoma Power Inc., Attawapiskat Power Corporation, Bluewater Power Distribution Corporation, Cat Lake Power Utility Ltd., Cornwall Electric Distribution, Hydro One Networks Inc. Hydro One Remote Communities Inc., PUC Distribution Inc., and Thunder Bay Hydro Electricity Distribution; Fort Albany Power Corporation; and Kashechewan Power Corporation.

Implementation of Global Adjustment (GA) Refinancing:

a) Supports the required calculations to be made by the OEB;
b) Provides the methodology that the OEB will use in applying reductions to eligible and non-regulated consumers who are eligible for GA refinancing;
c) Sets out the near-term reductions (i.e., the reductions that will be applied by the OEB from July 1, 2017 to April 30, 2018), as well as the reductions from May 1,

2018 to April 30, 2019. Further adjustments to be made for future periods beginning May 1, 2019 would be set out in further amendments the regulation; and,

d) Provides the Independent Electricity System Operator (IESO) with the necessary authority related to its activities, including the funding, borrowing and financial arrangements.

ii) Recommend the below proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New Regulation to be made under Part II of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*;
b) Amendment to O. Reg. 280/14 (IESO Eligible Investments and Borrowing) to be made under the *Electricity Act, 1998*;
c) New Invoicing Regulation to be made under the *Ontario Fair Hydro Plan Act, 2017*;
d) New Regulation (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA);
e) New Regulation (Distribution Rate Protection) to be made under the OEBA;
f) Amendments to O. Reg. 442/01 (Rural or Remote Electricity Rate Protection) to be made under the OEBA;
g) Amendments to the O. Reg 363/16 (General) to be made under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA); and,
h) Amendments to O. Reg. 275/04 (Information on Invoices to Certain Classes of Consumers of Electricity) to be made under the OEBA.

iii) Direct the Ministry to report back to TB/MBC with:

a) The details of additional proposed regulations with financial implications prior to proceeding to Cabinet for approval; and,
b) An update on previously minuted report back requirements.

APPENDIX F: DETAILS OF PROPOSED REGULATIONS

Partial Refinancing of the GA

The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the Global Adjustment (GA):

- Provide for the implementation of the roles and responsibilities of the Financial Services Manager (FSM)(i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
    - methodology for calculating the clean energy adjustment, the finance amount and the true-up amount;
    - required communications by FSM with OEB on clean energy adjustments for each reference period during the recovery period;
    - requiring that OEB use the FSM calculations of clean energy adjustment to determine a kWh amount for the clean energy adjustment for each reference period during the recovery period using IESO demand forecasts;
    - clarify FSM's ability to charge fees to the financing entities for the costs of its services and required activities under the OFHPA. FSM to submit methodology used for determining fees to the OEB for review and approval;
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
- Provide further criteria related to the development and implementation of the financing plan by the FSM;
    - reasonable assumptions and additional principles and that the FSM must make or take into account, such as seeking to incur funding obligations on the best terms available and flexibility to cope with changes to future fair allocation amounts; and,
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

Social Programs

Ontario Electricity Support Program

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills.

The ministry is proposing amendments to O. Reg. 314/15 made under the OEBA to enable Ministry of Community and Social Services staff to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table. The amendment is in support of efforts to increase enrollment by reducing application burdens on target populations and enable the

development of automatic enrollment procedures for some populations already receiving other government programming.

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account (used when OESP was funded by electricity ratepayers) to government funding. This timing is consistent with previous submission and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Regulations supporting implementation were before the Board June 13, 2017.

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

Regulations supporting implementation were before the Board June 13, 2017.

APPENDIX G: MINISTRY'S UPDATE ON RISKS AND MITIGATION STRATEGIES

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • In order to obtain financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. **Update:** • Work is ongoing to finalize a draft term sheet that would serve as the basis for the Master Subscription Agreement between OPG/ENERGY and OFA. In addition, OFA and ENE to develop Service Level Agreement for monthly cash management services.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry, IESO, OPG and other ministries have worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line. **Update:** • The legislation and proposed general regulation were developed with input from third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the Global Adjustment (GA). • OPG is continuing to work through the mechanics of securing financing (e.g., engaging rate agencies, etc).

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			• In addition, in order to provide assurances to those with claims against the "Financing Entity" (e.g., 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 IESO are carried out including obligations related to collecting and remitting clean energy adjustments. Working is ongoing.
Managing Interest Cost Risks	M	H	• OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%). **Update:** • The legislation and proposed general regulation were developed with input of third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the GA • The provincial guarantee as set out in legislation should provide comfort to dealers, thereby increasing the likelihood of achieving more favourable interest rates. • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
Provincial Guarantee is Triggered	L	H	• The legislation sets out that the province could provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also enables the Province to: o Through the Ministers of Energy and Finance upon approval by Lieutenant Governor in Council, agree to guarantee any debts and obligations; and **Update:** • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
IESO Failure to Establish a Regulatory Asset / Maintaining IESO Financial Viability	L	H	• Under the legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. • 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. **Update:** • IESO has received an accounting opinion from KPMG that concurs with IESO's view that it has

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			the ability to establish the regulatory asset. • In addition, OFA is planning to increase IESO's credit facility to support its role in implementing the OFHPA. OFA is proposing an OIC that would authorize the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.
Indemnities provided to OPG are triggered/called **(Not included in current June 27 submission)**	L*	H*	• Ministry of Energy staff are putting together a s.28 (under the Financial Administration Act) approvals package for submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan. o The indemnities are expected to provide coverage for both organizations and their respective Board members, officers and employees involved in implementing the plan. o As currently proposed, the Minister will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault. **Update:** • Work is ongoing to finalize the s.28 (under the Financial Administration Act) approval for indemnities. Note: There could be potential interactions between the provincial guarantees and the indemnities sought by OPG and the IESO, discussed below. A due diligence is currently ongoing by MOF Legal, OFA and Energy staff. A final draft indemnities package is pending.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. • Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax. • The legislation attempts to mitigate the risks identified above by requiring that the costs moved into the future align with the benefits that future rate payers will receive. To create the flexibility to achieve this requirement, the amounts of the costs and benefits will not be enshrined in the legislation. **Update:** • The legislation was designed to mitigate this risk.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			• The Fair Allocation Amount, the process for which is further clarified under general regulation, will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP)			
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting. • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program. • Social program regulations include provisions to require the IESO and the OEB to provide the Ministry with information required to update cost projections based on up-to-date figures.

APPENDIX H: UPDATE ON OUTSTANDING REPORT BACKS

Report back requirements	Expected Timing	Status (Pending from Energy)
Regulations - Report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14) Late June TB/MBC – Regulations for Global Adjustment (LRC/Cabinet – June 27)	
Global Adjustment Refinancing - Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.	August TB/MBC (TBC) – Sensitivity Analysis	
Sensitivity Analysis – Electricity Social Programs - Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.	August TB/MBC (TBC) – Sensitivity Analysis	
Electricity Social Programs and GA Financing - To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Risk Mitigation - To report back with updates to risk mitigation strategies that address key financial and operational risks.	TBD – potentially details would be in the Regulations submissions	
RRRP − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	

− Establishing program performance management framework including targets for the broadened program now government funded − Report on and assessment of impacts of consolidation of LDCs − Assessment of distribution rates and implications for the program		
OESP − Identify eligibility criteria, and refinements being made. − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers. − Establishing program performance management framework including targets for the expanded program now government funded.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Affordability Fund - Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.	Quarterly Reporting	
On-Reserve First Nations Delivery Charge - Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Industrial Conservation Initiative - Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.	Quarterly Reporting	

APPENDIX I: OVERVIEW OF RISK (CENTRAL AGENCIES PERSPECTIVE)

Prepared by TBS staff, the following chart provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

Global Adjustment Partial Refinancing:

Objective: Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising. • Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity. • Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements. • Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG. • Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end.

Risk	Level of Risk	Risk Response
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.
A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Medium **Risk Impact:** High **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and close monitoring of costs and changes in variables built into model. • Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Moderate **Time Scale:** 12 to 24 months **Rationale** • The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases. • Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing.	Risk can be avoided by: • Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure. Risk can be mitigated by: • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising. • Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity. • The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited. • An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG.
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.

Risk	Level of Risk	Risk Response
A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and ongoing monitoring of costs and changes in variables built into model. • Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** 12 to 24 months **Rationale** • The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases. • Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term.	Risk can be mitigated by: • Providing a "provincial guarantee" for the cost of borrowing. • Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption. • Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Electricity social programs (Enhancing Electricity Support & Conservation Programs):

Objective: Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

Risk	Level of Risk	Risk Response
Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province.	**Risk Likelihood:** Possible **Risk Impact:** Major **Timescale:** 12 to 24 months **Rationale:** • The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate. • Fiscal projection is highly dependent on factors which can fluctuate from year to year, including: o electricity usage; o distributions costs; and o consumer consumption patterns that may change due to extreme weather or other factors. • Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs. o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models.

From:	Ronald Kwan
To:	Gadi Mayman; Ken Kandeepan
Cc:	Anna Strathy
Subject:	Fwd: Part 2 OFHP Regs - Draft Sub and RAN
Date:	Saturday, June 24, 2017 5:46:48 PM
Attachments:	2 TB Sub 170621 TB SUB June 27.docx ATT00001.htm 3 RAN OFHP Regulations Part 2 v1.doc ATT00002.htm

---

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
To: "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
Cc: "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
Subject: Part 2 OFHP Regs - Draft Sub and RAN

Hi,

Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early afternoon.

James

MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

ONTARIO'S FAIR HYDRO PLAN – REPORT BACK

June 27, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

1. The Ministry of Energy is reporting back with updates to the Treasury Board/Management Board of Cabinet (TB/MBC) on the following:

    i. Implementation of Global Adjustment (GA) Refinancing; and

    ii. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP).

2.0 PURPOSE OF REQUEST

On May 31, 2017, Bill 132, the *Fair Hydro Act, 2017* (*FHA*), which enables Ontario's Fair Hydro Plan (OFHP) under the *Ontario Fair Hydro Plan Act, 2017*, (*OFHPA*) and the implementation of electricity social program-related amendments to the *Ontario Energy Board Act, 1998*, was passed by the legislature. The Bill received Royal Assent on June 1, 2017.

The FHA is comprised of two Schedules:

- Schedule 1 – is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* (*OEBA*); and

- Schedule 2 – includes the electricity social program-related amendments to the *OEBA.*

On May 9, 2017, as part of its *FHA* review, TB/MBC requested that the Ministry of Energy report back on key updates and the details of proposed regulations that would support Ontario's Fair Hydro Plan (OFHP).

On June 14, 2017, to support implementation of OFHP, LRC / Cabinet approved a first package of proposed regulations – these regulations are now in effect.

On June 27, 2017, LRC/Cabinet will review the second package, including a new general regulation under Schedule 1 of the FHA and two regulatory amendments related to the social programs.

The general regulation is necessary to ensure that the mechanisms for refinancing of GA as set out under the *OFHPA* are in place in time for the first debt offering in fall 2017.

CONFIDENTIAL

The Ministry of Finance (MOF) is also seeking an OIC under CIPA to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2 billion. This change will allow the OFA to enhance the IESO credit facility as necessary to assist with the timely and successful implementation of the OFHP.

The new *OFHPA* and the proposed regulation, along with the independent accounting analysis, legal support and technical analysis and future financial agreements (i.e., expected to be reached and signed in fall 2017) together mitigate the financing, accounting and legal issues raised in the March 1, 2017 Cabinet Submission and the May 9, 2017 TB submission.

The proposed amendments in this package are needed to implement the changes to the Ontario Electricity Support Program (OESP), under (OFHP, as enacted under the *OFHPA*. The proposed amendments support the implementation strategy to increase enrolment of social assistance clients' into the OESP.

1. Implementation of GA Refinancing:

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid) and clean generation, and phased out the use of coal-fired generation. These initiatives have resulted in electricity prices increasing.

On March 2, 2017, as part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Under the *OFHPA* which enables GA Refinancing, electricity bills of typical residential consumers would be reduced by 25 per cent starting on July 1, 2017. In addition, the government has committed to hold increases to electricity bills to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

CONFIDENTIAL

Proposal

On June 27, 2017, to support implementation of OFHP, LRC / Cabinet will review the following proposed regulation:

- Creating a new Regulation ("General Regulation") to be made under the *Ontario Fair Hydro Plan Act, 2017*(*OFHPA*), which is Schedule 1 of the *Fair Hydro Act, 2017*.

The new regulation would, if approved, provide further detail on the roles and responsibilities of the Financial Services Manager (FSM, i.e., Ontario Power Generation (OPG)), the Independent Electricity System Operator (IESO) and Ontario Energy Board (OEB) under the OFHPA.

The proposed regulation would, if approved, also provide further criteria related to the development and implementation of the Financing Plan by the FSM, , the setting of the Fair Allocation Amount by the Minister of Energy and the recovery of the Clean Energy Adjustment from electricity consumers, as required under the OFHPA.

Implementation

To implement GA refinancing and mitigate financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- On June 1, 2017, the *OFHPA*, which enables GA refinancing and responds to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission, received Royal assent. Note: The Ministry has also prepared regulations to support implementation (as noted above);

- Received accounting opinions from E&Y (OPG) and KPMG (IESO);

- Received independent advice regarding financing and legal requirements from TD Securities (OFA) and Blakes (ENERGY); and

- Launched third party technical analysis to assist with implementation of GA refinancing.

CONFIDENTIAL

2. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP)

- The proposed amendments to O. Reg. 314/15 will facilitate the processing of OESP applications by MCSS on behalf of SA clients pursuant to an agreement with the Minister or the OEB, and help meet the government's goal of substantially increasing uptake in the OESP. Proposed amendments include:

    - Changes to the OESP eligibility definitions when MCSS is processing applications on behalf of SA clients that would make household size and household income – the two main criteria for determining OESP eligibility –consistent with the criteria that MCSS uses to determine financial eligibility for social assistance. These changes are needed because there are minor differences in how eligibility is determined between SA programs and the OESP.
    - Recognizing the "benefit unit" as eligible for OESP, such that a current or new SA client who is not the utility account holder, but is part of an account holder's benefit unit, can still receive support from MCSS to apply to the OESP.
    - Addressing current and future scenarios where those deemed financially eligible for SA fall outside of the current OESP eligibility categories. Proposed amendments to Schedule 1 would ensure that anyone deemed financially eligible for social assistance (and is part of a benefit unit that is billed directly for electricity) would also be eligible for OESP.

- The proposed amendments O. Reg. 314/15 (Ontario Electricity Support Program) made under the OEBA are needed to implement the changes to the Ontario Electricity Support Program (OESP), under Ontario's Fair Hydro Plan (OFHP), as enacted under the FHA. The proposed amendments support the implementation strategy to increase enrolment of social assistance clients' into the OESP.

Rural or Remote Rate Protection

Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

The new legislation enables, through regulation, the transfer of the costs of funding the program for Hydro One's R2 customers from the rate-base to the tax-base for prescribed customers. The regulation will also prescribe the monthly amount of rate protection available to Hydro One R2 customers through RRRP.

CONFIDENTIAL

- R2 customers are those customers of Hydro One classified as living in the lowest density areas of the Province.

Distribution Rate Protection

While the RRRP program helps mitigate some of the higher distribution costs for Hydro One R2 customers, as well as certain customers served by Algoma Power, Hydro One Remote Communities and James Bay First Nation LDCs, there is an opportunity to provide further relief to consumers served by higher distribution cost LDCs.

The new legislation enables tax-based funding to support distribution rate protection for prescribed residential customers of LDCs with high-cost distribution rates. Eight high-distribution cost LDCs whose customers are eligible customers will be prescribed in regulation. Residential customers of Algoma Power and Hydro One R2 customers would be eligible for additional relief as these LDCs are the highest cost distributors in the province (as well as six additional higher-distribution cost LDCs).

The regulation will set out a process that the OEB will utilize to determine the maximum monthly distribution charge that all prescribed high-cost distributors will charge their customers. In future years, this harmonized monthly charge, by design, cannot decrease as it adjusts to reflect the higher of either the lowest rate LDC in the program, or the maximum monthly charge of the previous year, as determined by the OEB.

Ontario Electricity Support Program (OESP)

OESP began on January 1, 2016 as a rate-payer funded program to provide relief to low income Ontarians who are struggling to afford their electricity bills. The OEB administers the program.

The Fair Hydro Plan committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.
March 23, 2017, the OEB issued a Decision and Order to end the OESP volumetric charge paid by all Ontario consumers on May 1, 2017 ($0.0011 per kilowatt-hour of power consumed). On April 10, 2017, Cabinet approved amendments to the OESP regulation (O.Reg. 314/15) to increase credit amounts by 50% and introduce new eligibility categories so more Ontarians can access the program. These changes came into effect on May 1, 2017.

As part of the OFHP, ENERGY has already completed the following legislative and regulatory changes on OESP:

CONFIDENTIAL

- Effective May 1, 2017, ENERGY completed a regulatory amendment to O. Reg. 314/15 to increase OESP credit amounts by 50% and expand eligibility criteria.

- Corresponding legislative amendments to section 79.2 of the OEBA were made to enable the program to shift from the rate-base to the tax-base once the rate-base pooled funding has been depleted. The intended approach involves proclaiming s.79.2 of the OEBA into force on a future date to be named by proclamation.

- These legislative amendments also provided authority for the Minister or the OEB to enter into an agreement with MCSS to provide services related to the administration of the OESP on behalf of SA clients, including data-sharing and information-sharing required to deliver OESP to SA clients. Along with ss. amendments to s. 79, the new sections 79.3 and 79.4, came into force on Royal Assent on June 1, 2017.

Implementation

MCSS will be responsible for implementing the proposed regulatory changes once an agreement has been entered into between the Minister and/or the OEB and MCSS, which were designed to support a strategy jointly developed by ENERGY, the OEB, and MCSS to meet the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery.

MCSS will be seeking Treasury Board approval for resources to implement these proposed changes in a separate request.

3.0 KEY CONTEXT

On June 1, 2017, the *Fair Hydro Act, 2017*, the legislation to enable the Ontario Fair Hydro Plan (OFHP) under the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) received Royal assent. The OFHPA will reduce the electricity bills of typical residential consumers by 25 per cent starting in summer 2017. Up to 500,000 small businesses and farms would also benefit.

OFHP also announced other measures to enhance business competitiveness, helping vulnerable consumers and reduce the cost of electricity over the longer term.

The Ministry's report back and update to TB/MBC focuses on the following OFHP initiatives:

1) Implementation of GA Refinancing:

CONFIDENTIAL

Under the *OFHPA*, a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Today's electricity consumers have been bearing disproportionate cost responsibility for the investments in developing the clean, modern and reliable electricity system that Ontario has today and that will continue to provide benefit to future generations. The legislation recognizes the long-term benefit of clean energy investments to more appropriately allocate costs into the future to account for long-term benefits.

Refinancing a portion of the GA would provide significant and immediate rate relief to electricity consumers that have been burdened with the costs of the necessary investments that have been made to decarbonize and modernize the province's electricity infrastructure. This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for or benefit from the province's multi-billion dollar investments in electricity infrastructure.

To implement GA refinancing and to mitigate the financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed the *Fair Hydro Act, 2017* which enables the OFHP under the *Ontario Fair Hydro Plan Act (OFHPA), 2017*, to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: On June 1, 2017, the *OFHPA* received Royal assent.

- Developed supporting regulations which further contribute to the implementation of the OFHP under the legislation;

    - One new regulation under the OFHPA, *Ontario Regulation 195/17 Fair Adjustment under Part II of the Act.* and one amendment to existing regulation under the Electricity Act, 1998 (O. Reg. 280/14, IESO: Eligible Investments and Borrowing) went to LRC/Cabinet on June 14, 2017; and

    - A further new proposed regulation will go to the June 27,2017 LRC/Cabinet.

CONFIDENTIAL

- Received accounting opinions from E&Y (OPG) and KPMG (IESO);

- Received independent advice regarding financing and legal requirements from TD Securities (OFA) and Blakes (ENERGY); and

- Launched a third party technical analysis project to assist with implementation of GA refinancing. Scope of work includes analysing the expected lifecycle of the existing generation infrastructure and related financial modeling of costs over an extended timeframe.

On June 27, 2017, to support implementation of OFHP, LRC / Cabinet will review the following regulation:

Creating a new Regulation ("General Regulation") to be made under the *Ontario Fair Hydro Plan Act*, 2017, which is Schedule 1 of the Fair Hydro Act, 2017.

- The proposed regulation supports key aspects of the OFHPA including:

    - Details around establishment and transfer of portions of the regulatory asset;
    - The establishment of the OFHPA-related deferral and variance account to be held by the Independent Electricity System Operator (IESO);
    - The definition and details regarding the "funding obligation" which relates to the recovery of moneys borrowed by OPG/financing entity to fund GA refinancing;
    - Methodology related to the calculation by the FSM of the Clean Energy Adjustment (CEA, i.e., the total amount payable by electricity consumers each reference period) including the communication of the CEA amounts to be collected to the OEB for its use in setting rates;
    - Determination of rates and amounts related to the recovery of the CEA under which regulated rate consumers must be invoiced and which must be used in the calculation of rates for non-regulated consumers;
    - Requirements for electricity vendors (the IESO, LDCs, retailers and unit sub-meter providers (USMPs)) in relation to the collection of amounts in respect of the CEA from electricity consumers;
    - The composition of the FSM's fees and the OEB's role in the review of those (i.e., the fees related to the ongoing operation of the FSM during the period of GA Refinancing);
    - Details related to the methodology to be used by the Minister in the calculation of the Fair Allocation amount (i.e. a calculation of the fair allocation of clean energy costs over time); and
    - Further criteria related to the development and implementation of the Financing Plan by the FSM.

CONFIDENTIAL

Financing, Accounting and Legal Risk Considerations / Mitigations

The Ministry was asked to report back to TBS/MBC with details on how financing, accounting and legal risks would be mitigated.

Financing

OFHPA Legislation

The purpose of the legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in the electricity system are allocated fairly among present and future generations of consumers. Costs to be allocated include clean and renewable generation facilities, conservation, demand management and energy efficiency programs.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the (GA), including:

- Fair Allocation Amount: A calculation and allocation of clean energy costs over time in proportion to clean energy benefits. It is expected that the calculation would lead to decreased rates in the near term with rates higher than forecast in the long term. The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager (OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister if prescribed by regulation.

- Fair Adjustment: Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018. Under the legislation, the OEB must determine the amount within 15 business days of the legislation coming into force. The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period May 1, 2018 to June 30, 2021.

- Clean Energy Adjustment: The mechanism to recover the under-collection of GA from eligible consumers during the recovery period. This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing costs. IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

The Ministry has prepared the legislation, recently passed regulation and supporting proposed regulation in close collaboration with key ministries (i.e., TB, MOF, AG and CO), agencies (i.e., OEB, IESO, OPG) and external legal and financial advisors.

CONFIDENTIAL

The legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recoverable.

The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year.

The regulations further support the legislation in terms of providing clarity on the roles of the Ministry, OEB, IESO, and OPG.

As reported in the TB/MBC submission of May 9, 2017, it is still possible that the full value of the Regulatory Asset may not be purchased. In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

In addition, the Ministry has worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

In particular, the legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:

- OPG issuances of subordinated debt to the Special Purpose Vehicle(SPV)/Trust representing up to 49% of total borrowing; and
- Conditional (springing) guarantees by the Province that will include a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).

Note: The ability to finance and the cost of financing will only be known with certainty once OPG receives the rating of the offering in July/August 2017, seeks short term financing in September/October 2017 and sells the initial offering on the market by the end of October 2017. These milestones are contingent on the creation of the SPV/Trust to facilitate the subsequent sale of the Regulatory Asset by IESO to the SPV/Trust.

<u>OPG Financing / OPG Equity Financing</u>

CONFIDENTIAL

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

As reported in the May 9, 2017 submission to TB/MBC, IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG SPV/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation and regulations enables refinancing of the GA.

The general regulation sets out principles, assumptions and further clarity on process for the development of the financing plan and the implementation of clean energy adjustments to recover amounts related to funding obligations incurred under the terms of the financing plan.

Purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;

CONFIDENTIAL

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

- It is anticipated that the initial equity injection would take place as early as June 2017.

In April 2017, the Ministry of Energy received approval for the creation of an operating asset ”OPG Share Purchase” and an increase in operating asset allocation for $1.1 billion. This approval was dependent on the passing of the legislation (i.e., the OFHPA that received Royal assent on June 1, 2017).

OPG will provide a two-year forecast of its equity requirements to the Ministry on annual basis, as part of OPG’s business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy’s concurrence process and are expected to be fiscally neutral.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province’s rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast (e.g., as a result of greater electrification,), the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.

- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don’t rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

<u>IESO’s Credit Facilities</u>

CONFIDENTIAL

As report in the May 9, 2017 submission to TB/MBC, IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current “line of credit” with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO’s contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

The Ministry of Finance (MOF) is seeking an OIC under CIPA to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2 billion. This change will allow the OFA to enhance IESO credit facility as necessary to assist with the timely and successful implementation of the OFHP.

Accounting

As reported in the TB/MBC submission of May 9, 2017, legislation to enable GA refinancing has benefitted from the review and input of IESO/KPMG, OPG/E&Y and OPCD/E&Y.

The legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.

Under the legislation, OEB will issue an “accounting order” to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. This satisfies accounting concerns regarding OEB oversight in the establishment of the Regulatory Asset.

IESO will effectively sell the “right to collect” deferred future revenue from ratepayers to OPG in return for cash proceeds.

CONFIDENTIAL

The legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement.

To recover its revenue shortfall, IESO will establish a Regulatory Asset that it would sell to OPG's SPV/Trust.

The general regulation provides further clarity on the process for establishing the asset and what costs are eligible for inclusion in the asset.

IESO / KPMG

As reported in the TB/MBC submission of May 9, 2017, the Ministry has worked closely with the Independent Electricity System Operator (IESO) and KPMG on the accounting considerations of GA Refinancing (i.e., legislation, applications of accounting standards/principles, minimizing consolidation risks and ability to establish a regulatory asset).

In particular, the legislation provides a structure that IESO and KMPG – in the accounting opinion they provided to IESO – believe meets the necessary accounting requirements. Key elements include:

- An IESO variance account created by the legislation that would be recognized as a "regulatory asset".

- An Ontario Power Generation (OPG) special purpose vehicle (SPV) / Trust that would not controlled by IESO and thus have no consolidation risk for IESO.

In addition, KMPG provided some commentary on the accounting requirement for the "derecognition" of the regulatory asset once it's sold to OPG SPV/Trust. KPMG advised that the regulatory asset should be derecognized upon transfer to the OPG SPV/Trust as IESO no longer has rights or obligations to the asset (i.e., the transformation from a regulatory asset to an investment asset).

OPG/ E&Y

As reported in the TB/MBC submission of May 9, 2017, the Ministry has worked closely with Ontario Power Generation (OPG) and E&Y, on the accounting requirements to enable GA Refinancing with respect to consolidation (i.e., legislation, applications of accounting standards/principles, establishing a special SPV / Trust).

The legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct

CONFIDENTIAL

business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust, additional work will be done through the regulations and supporting agreements/documents.

- OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.

- OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Based on the legislation, key operating conditions being addressed in regulations and supporting agreements/documents and no introduction of new conditions that would conflict with OPG's control of the SPV/Trust, E&Y concurs with OPG's assessment that the accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Legal

The legal risks flagged in the May 9, 2017 submission to TB/MBC have not changed.

In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:

The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

CONFIDENTIAL

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.

The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

Navigant Analysis

Navigant Consulting, Inc. has been retained to provide its assessment of the expected lives of clean energy asset, as well as a fair allocation of the costs of these assets over the expected lives.

Navigant has focused on the costs and benefits of procuring natural gas, wind, and solar generation, as well as costs associated with conservation and the early retirement of Ontario's coal assets.

The Navigant scope of work includes:

- Research and analysis to ascertain the likely service lives of gas generating, solar and wind facilities from a largely technical point of view;
- Analysis related to the expected cost of extending the service lives of facilities under contract with IESO; and
- Determining the annual cost of a refinanced contract that provides the same value as each generator's actual contract but is extended over the expected life of each generator.

Ontario ratepayers currently pay for the costs of its gas, wind, and solar generators over the life of power purchase agreements (PPAs), which generally run for twenty years. Provincial ratepayers also pay for conservation procurement as costs are incurred, and over the period of 2009-2014 paid for the early shutdown of provincial coal plants on an accelerated schedule.

CONFIDENTIAL

Given that the clean energy and conservation benefits associated with the assets occur over the entire of life of the asset, there is an opportunity to define an alternative financing methodology that better aligns the costs with benefits.

Navigant is in the process of finalizing its work.

2) Social Programs: PLACEHOLDER FOR SNAP UPDATES

Program Design

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application-based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.

OESP credits vary by income level and family size, and there are two credit scales that include:

- The basic program credit originally ranged from $30/month to $50/month. The new credit amounts came into effect May 1, 2017 and range from $35/month to $75/month.

- An enhanced credit, which originally ranged from $45/month to $75/month for consumers that are either Indigenous, use electric heat or use certain electrically intensive medical devices. The new credit amounts came into effect on May 1, 2017 and range from $52/month to $113/month.

Ontario's Fair Hydro Plan (OFHP) committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake. Recently approved legislative changes have enabled the transition of the program to the tax base, which will be enacted by a subsequent proclamation and associated regulatory changes.

In the meantime, amendments to the OESP regulation (O. Reg. 314/15) are being proposed in order to enable alignment of OESP delivery with social assistance programs delivered by MCSS.

The proposed amendments to O. Reg. 314/15 will facilitate the processing of OESP applications by MCSS on behalf of SA clients pursuant to an agreement with the Minister or the OEB, and help meet the government's goal of substantially increasing uptake in the OESP.

CONFIDENTIAL

Roles and Responsibilities

Ontario Electricity Support Program

The OEB will continue to deliver the OESP under the current legislative framework until the variance account is depleted. When legislative changes to shift the program from the rate base to the tax base are proclaimed, the OEB will continue to administer the program, but certain decision making responsibilities and oversights will shift to the Minister of Energy.

Second, OEB and its OESP delivery consultant – ICF Consulting – will help MCSS to expeditiously prepare for implementation by providing training materials and technical support for MCSS system changes. The amount of the original contract between ICF and the OEB is $12 million. Cost impacts are expected to be minimal and are covered by the OEB's existing authorities to cover administration costs related to the OESP using the OESP variance account.

MCSS will be responsible for implementing the proposed regulatory changes once an agreement has been entered into between the Minister and/or the OEB and MCSS, which were designed to support a strategy jointly developed by ENERGY, the OEB, and MCSS to meet the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery.

The IESO will continue to manage payments to utilities, unit sub-meter providers, and the OEB in relation to OESP credit delivery and program administration costs. When legislative changes are proclaimed, IESO will begin reporting costs to the Ministry to support forecasting and audit.

4.0 BACKGROUND

Legislation to Implement Ontario's Fair Hydro Plan

On May 11, 2017, the government introduced Bill 132, *Fair Hydro Act, 2017* (FHA) which is comprised of two Schedules:

- Schedule 1 – is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* (OEBA); and

- Schedule 2 – includes the electricity social program-related amendments to the *Ontario Energy Board Act, 1998.*

CONFIDENTIAL

On May 31, 2017, the Bill passed third reading and received Royal Assent on June 1, 2017.

Legislation to Implement GA Refinancing

To enable implementation of GA refinancing and mitigate financing, accounting and legal risks, the *Ontario Fair Hydro Plan Act, 2017* outlines:

- Roles and responsibilities for the OEB, IESO, OPG and the Province;
- A detailed Preamble, Purpose and Definitions;
- Details with respect to Fair Adjustment, Clean Energy Adjustment, Implementation (i.e., Financial Services Manager, Fair Allocation Amount, Financing Plan), Regulatory Asset and Investment Asset;
- Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
- Amendments to other acts (i.e., *Electricity Act* and *Ontario Energy Board)*.

The legislation defines the mechanisms and framework that would achieve the refinancing of the GA.

The Ministry has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing in the development of the legislation.

To support the implementation of GA refinancing under the *Fair Hydro Act, 2017*, the Ministry has developed supporting regulation:

- Creating a new Regulation ("General Regulation") to be made under the Ontario Fair Hydro Plan Act, which is Schedule 1 of the Fair Hydro Act, 2017.
- The proposed regulation supports key aspects of the OFHPA including:
    - The details around the establishment and transfer of portions of the regulatory asset;
    - The establishment of the OFHPA-related deferral and variance account to be held by the Independent Electricity System Operator (IESO);
    - The definition and details regarding the "funding obligation" which relates to the recovery of moneys borrowed by OPG/SPV to fund GA refinancing;

CONFIDENTIAL

- Methodology related to the calculation of the Clean Energy Adjustment (i.e., the total amount payable by electricity consumers each reference period);
- Determination of rates and amounts related to the recovery of the Clean Energy Adjustment under which regulated rate consumers must be invoiced and which must be used in the calculation of rates for non-regulated consumers;
- Requirements on the IESO, LDCs, retailers and unit sub-meter providers (USMPs) in relation to the collection of amounts in respect of the Clean Energy Adjustment from electricity consumers;
- OEB's role in the review of fees incurred by Financial Service Manager (i.e., the fees related to the ongoing operation of the Financial Services Manager during the period of GA Refinancing);
- Details related to the methodology to be used by the Minister in the calculation of the Fair Allocation amount (i.e. a calculation of the fair allocation of clean energy costs over time);
- Further criteria related to the development and implementation of the Financing Plan by the Financial Services Manager.

Ontario Electricity Support Program (OESP)

The OESP launched on January 1, 2016. By the end of May 2017:

- Almost 200, 000 have been enrolled in the program, which is approximately 35% of all potentially eligible low-income customers in Ontario.
- Over $60 million in credits have been provided to vulnerable consumers.
- 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.

5.0 TIMING

Under the *OFHPA*, a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Some of Ontario's Fair Hydro Plan commitments for the OESP came into effect on May 1, 2017 (e.g., removal of the OESP charge from customer bills; expanding credit amounts and program eligibility). Remaining changes associated with moving the program from the rate-base to the tax-base will be proclaimed at a later date when the OESP variance account is depleted.

CONFIDENTIAL

Additional regulatory amendments needed to implement this legislative change will come into effect on the same date.

Further work to enable GA refinancing to be undertaken Summer/Fall 2017:

- Minister to determine the Fair Allocation Amount for each reference period;
- OPG/SPV to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount;
- IESO to record deferral amounts and establish the regulatory asset;
- OPG/SPV to begin purchasing of investment asset; and
- OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests.

6.0 FINANCIAL IMPACT

1) GA Refinancing:

The General regulation would support the implementation of GA refinancing, including methodology, principles and assumptions related to various aspects of the initiative (e.g., fair allocation amount). By achieving the accounting treatment described in this, and previous, submissions, the initiative is not expected to have a financial impact.

2) Social Programs:

Cost impacts for the amending O. Reg. 314/15 are expected to be negligible. There is significant overlap between the financial eligibility for the OESP and other social assistance programs, resulting in very few occurrences where SA clients do not meet the current OESP eligibility requirements.

As reported in the TB/MBC submission of May 9, 2017 and as approved in the TB/MBC submission of March 1, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Ontario Electricity Support Program	140,000,000

The cost forecasts for these programs were made through a combination of Ministry analysis that utilized consumption data and local distribution

CONFIDENTIAL

company rates to estimate program costs, and information provided to the Ministry by the Ontario Energy Board. Cost forecasts are subject to some uncertainty surrounding consumer uptake, future consumption levels, and future rates as set by the OEB.

ENERGY will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $106 million as of May 2017. These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs. Due to the potential range in costs of the OESP, which will depend on program uptake and any costs associated with supporting increased participation, the set allocation is required despite the variance account.

Per the Regulations, the Ministry has the authority to request social program costs forecasts from the OEB.

7.0 STAKEHOLDER ANALYSIS

Stakeholder	Comments
Eligible Electricity Consumers	• As a result of OFHP, eligible electricity consumers will welcome the immediate reduction in electricity bills that they will experience in the short to medium term.
Electricity Agencies	• In the development of legislation to enable implementation of OFHP, the Ministry has been working closely with OEB, IESO and OPG and their independent advisors.
Local Distribution Companies (LDCs)	• The Ministry hosted LDC workshop sessions on March 16, April 19, and May 17, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation. The Ministry has also held separate engagements with LDCs in particular to the social programs.
Government (MCSS)	• ENERGY has been engaging with MCSS and the OEB for several months to develop a strategy for meeting the government's objective of substantially increasing OESP uptake by aligning it with SA program delivery. The joint strategy instructed the recent amendments to the OEBA, and the changes to O. Reg. 314/15 that are being proposed in this submission.

8.0 RISK ASSESSMENT AND MITIGATION – UPDATES

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • In order to provide financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. **<u>Update:</u>** • Work is ongoing to finalize a draft term sheet that would serve as the basis for the Master Subscription Agreement between OPG/ENERGY and OFA. In addition, OFA and ENE to develop Service Level Agreement for monthly cash management services.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry, IESO, OPG and other ministries have worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			debt, with the remaining 49% being provided by OPG as subordinated debt. U • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line. **Update:** • The legislation and proposed general regulation were developed with input from third-party financiers (i.e., dealers) to ensure that the *OFHPA* enables the refinancing of the Global Adjustment (GA). • OPG is continuing to work through the mechanics of securing financing (e.g., engaging rate agencies, etc). • In addition, in order to provide assurances to those with claims against the "Financing Entity" (e.g., 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 IESO are carried out including obligations related to collecting and remitting clean energy adjustments. Working is ongoing.
Managing Interest Cost Risks	M	H	• OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%). **Update:** • The legislation and proposed general regulation were developed with input of third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the GA

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			• The provincial guarantee as set out in legislation should provide comfort to dealers, thereby increasing the likelihood of achieving more favourable interest rates. • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
Provincial Guarantee is Triggered	L	H	• The legislation sets out that the province could provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also enables the Province to: o Through the Ministers of Energy and Finance upon approval by Lieutenant Governor in Council, agree to guarantee any debts and obligations **<u>Update:</u>** • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
IESO Failure to Establish a Regulatory Asset / Maintaining IESO Financial Viability	L	H	• Under the legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish it as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. • IESO requires short-term financing to be in place for initial and expected monthly timing differences, or in the event that the

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			OPG SPV, at any time, does not purchase a portion of the regulatory asset. **<u>Update:</u>** • IESO has received an accounting opinion from KPMG that concurs with IESO's view that it has the ability to establish the regulatory asset. • In addition, OFA is planning to increase IESO's credit facility to support its role in implementing the OFHPA. OFA is seeking an OIC that would authorize the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. • Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax. • The legislation attempts to mitigate the risks identified above by requiring that

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			the costs moved into the future align with the benefits that future rate payers will receive. To create the flexibility to achieve this requirement, the amounts of the costs and benefits will not be enshrined in the legislation. **<u>Update:</u>** • The legislation was designed to mitigate this risk. • The Fair Allocation Amount, the process for which is further clarified under general regulation, will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP) *3)*			
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting. • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program. • Social program regulations include provisions to require the IESO and the OEB to provide the Ministry with information required to update cost projections based on up-to-date figures.

9.0 JURISDICTIONAL ANALYSIS

CONFIDENTIAL

GA Refinancing approached outlined in the legislation is modelled on frameworks used in the United States (e.g., Duke Energy), where utility debt is financed by selling it to investors with recovery from ratepayers over time.

The Ministry conducted no jurisdictional analysis related to the expansion of social program funding for OESP as the structure of Ontario's electricity sector, and thus the delivery of these benefits, is unique.

10.0 PERFORMANCE MEASURES

With respect to OESP, ENERGY will continue to track the performance of the OESP program with a focus on collecting metrics related to program uptake.

The Ministry and the OEB have engaged with the Behavioral Insights Office at the TBS to consider ways to increase program participation. Discussions are ongoing.

12.0 RECOMMENDATION

1) The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on the following:

    i. Implementation of Global Adjustment (GA) Refinancing; and

    ii. Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP).

CONFIDENTIAL

TREASURY BOARD / MANAGEMENT BOARD OF CABINET
REQUEST ASSESSMENT NOTE

Ministry:	Energy
Meeting Date:	June 27, 2017
Agenda Class:	Major Item
Last reviewed by: TB/MBC – June 13, 2017	**Tracking to: Fast Track** LRC/Cabinet – June 27, 2017

SUBMISSION TITLE:	Report back on Ontario Fair Hydro Plan – Regulations Part 2 of 2

I. DECISION BEFORE THE BOARD

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding Cabinet for approval

II. RECOMMENDATIONS:

• Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to for approval including: o Global Adjustment Refinancing; o Ontario Electricity Support Program (OESP)	*Receive*
Note key aspects and program parameters of the proposed regulations	*Note*
Recommend the proposed regulations proceed to Cabinet for approval	*Recommend*
• Direct the Ministry to report back to TB/MBC on: o Details of its overall strategy to substantially increase OESP enrolment (note: includes increasing Social Assistance clients enrolled in OESP).	*Direct*

III. FINANCIAL SUMMARY

$ Millions	**2017-18**	**2018-19**	**2019-20**
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base: Global Adjustment Refinancing*	0.0	0.0	0.0
Electricity social programs – OESP ^	140.0	261.0	325.0
Offset Recommended	0.0	0.0	0.0
Total Potential Fiscal Impact	0.0	0.0	0.0

*As part of Global Adjustment Refinancing, an Operating Asset for $1.1B for OPG Share Purchase was included as part of 2017 Budget.

^Multi-year appropriation approved as part of the 2017 Budget.

IV. KEY COMMENTS AND CONSIDERATIONS

In March 2017, the Ministry received Treasury Board/Management Board of Cabinet (TB/MBC) approval for electricity price mitigation measures that support a 25% electricity bill reduction on average (including the 8% Ontario Rebate For Electricity Consumers announced in 2016). The Ontario Fair Hydro Plan (OFHP) was announced on March 2, 2017.The plan includes refinancing a portion of the Global Adjustment (GA) and helping vulnerable electricity consumers ("social programs") amongst other initiatives for residential consumers (see Appendix C). The Ministry was directed to report back to TB/MBC on a number of items including the proposed legislation required to enact the initiatives under

OFHP (see Appendix D).

Report backs to date include:

- May 9th 2017, the Ministry provided an implementation update on the OFHP and the enabling legislation. TB/MBC recommended the proposed legislation proceed to Cabinet for approval and Ontario's *Fair Hydro Act, 2017* ("the Act") received Royal Assent on June 1, 2017. The Ministry was directed to report back to TB/MBC on a number of items including the proposed regulations required to support the implementation of the OFHP (see Appendix E).

- June 13, 2017, the Ministry provided the first of two updates on next steps in implementation of the OFHP, specifically providing the proposed regulations that would establish and amend the necessary regulations under the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, *Ontario Rebate for Electricity Consumers Act, 2016*, and the *Fair Hydro Plan Act, 2017*.

Proposed Regulations

The current submission before the Board is the second bundle of proposed regulations supporting implementation of the OFHP and would establish and amend regulations under the *Ontario Energy Board Act, 1998 and the Ontario Fair Hydro Plan Act, 2017*, related to GA Refinancing and the Ontario Electricity Support Program (OESP).

Implementation of Global Adjustment (GA) Refinancing

On March 2, 2017, as part of OFHP, the government announced that a portion of the GAs would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

As Part 2 of the regulations report back (Part 1 was before the Board June 13, 2017), The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the GA by ensuring that the mechanisms for refinancing of GA as set out under the *OFHPA* are in place in time for the first debt offering in fall 2017:

- Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG), OEB, and IESO in relation to the refinancing of GA
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM)
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account
- Provide further criteria related to the development and implementation of the financing plan by the FSM
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

IESO Credit Facility

The Ministry of Energy indicates the IESO is responsible for financing short to medium term funding shortfalls in the implementation of Ontario's Fair Hydro Plan. This was noted by the Board as part of the legislative package brought on May 9, 2017.

To support this, the Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2B, which will provide the OFA with the capacity to provide additional loans to the IESO in order to fulfil the commitments under the Fair Hydro Act, 2017. The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

The Ministry indicates further work to enable GA refinancing will be undertaken Summer/Fall 2017:

- Minister to determine the Fair Allocation Amount for each reference period;
- OPG/SPV to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount;
- IESO to record deferral amounts and establish the regulatory asset;
- OPG/SPV to begin purchasing of investment asset; and
- OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests.
-

(Energy, perhaps additional section outlining what will regularly be coming before TB/MBC once OFHP is underway)

Delivery of Electricity Social Programs:

Ontario Electricity Support Program

The ministry is proposing amendments to the existing Ontario Electricity Support Program (OESP) regulation that will enable the Ministry of Community and Social Services to help new and existing social assistance clients to enroll in the OESP.

The amendments are in support of efforts to increase enrollment by reducing application burdens on target populations and enable the development of automatic OESP enrollment procedures for some populations already receiving other government programming (in this case already receiving social assistance).

- MCSS and Energy intend to bring a temporary resources request to the July 25, 2017 TB/MBC meeting. Early indications suggest about 50 temporary FTEs within MCSS and Energy providing the funding to support increasing enrolment of Social Assistance clients onto OESP.
- The March 1, 2017 Board Minute included direction to pursue additional measures to substantially increase OESP take-up. The Ministry indicates OESP enrolment is about 35% of the targeted low-income population (about 575,000 target population). Stats provided by MCSS indicate just over 109,000 Social Assistance clients being eligible for OESP (as they receive hydro bills directly), but MCSS does not know the portion of the 109,000 that are already OESP recipients.
    - As part of the July 2017 joint submission from MCSS and Energy, Energy should provide commentary on its overall strategy to move OESP towards 100% participation (This engagement of MCSS would be part of the strategy).

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account to government funding. This timing is consistent with previous submissions and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Analysis/Risks

TBS staff noted as part of the May 9, 2017 submission focused on OFHP legislation indicated that financial, legal, and accounting external opinions and assessments of the planned approach to GA refinancing are supportive of the Ministry's intended plan for implementing Ontario's Fair Hydro Plan, noting the opinions and assessments must be revisited once key implementation details are finalised (e.g. draft legislation, regulations, special purpose vehicle documents, terms of conditions within various other agreements).
Future reassessments, Navigant's analysis of expected lifecycle for existing generation infrastructure (key), and other factors such as Ontario electricity demand, interest rates in the medium to long-term, and the rate of inflation may contribute to fiscal plan implications emerging over time.

This assessment has not changed with the current submission. The Ministry indicates Navigant's analysis is still pending along with finalized details for elements such as the special purpose vehicle documents, and terms/conditions within various other agreements.

Financial

- The multi-year fiscal profile identified by the Ministry as part of this submission (below) are consistent with the voted appropriation approved for the Ministry through the 2017 Budget. Cost forecasts for these programs were made through a combination of Ministry analysis that utilized consumption data and local distribution company rates to estimate program costs, and information provided to the Ministry by the OEB.

$M	2017-18	2018-19	2019-20	2020-21
Ontario Electricity Support Program (OESP)	140	261	325	375

- The Ministry notes it is currently assessing the potential impact of the Hydro One rate application and will report back to TB/MBC with the potential out-year impacts of this rate application.
- The allocations for the social programs are based on a number of variable inputs such as program uptake, electricity market conditions and forecasting models that are subject to change and represent an on-going fiscal risk. Sensitivity analysis will allow the government to develop a risk based outlook to understand potential fluctuations in the cost of these initiatives.
- There are no sunset dates for the programs and it is important to understand the full cost of the initiatives (including electricity price projections) for the longer term, beyond the year 2021-22.
- Lastly, further information is required on the detailed consumer impacts with assumptions and methodologies specified and documented to support better decision making and achieving the intended program goals.

Accounting

- The fiscal impact associated with the OFHP will be determined by how the series of complex transactions are accounted for on the Province's Consolidated Financial Statements which are prepared in accordance with public sector accounting standards established by CPA Canada. A number of details yet to be finalized through the regulations and various commercial agreements will impact the final accounting analysis.

- While accounting for the social programs and the Affordability Fund as transfers is fairly straightforward, the accounting for the GA mechanism is relatively more complex. To mitigate accounting risk associated with the latter, both the IESO's and OPG's external auditors have provided independent accounting opinions on the appropriate accounting for elements of the OFHP structure related to each entity, contingent on finalization of regulations and commercial agreements. Based on the audited financial results for these organizations, supported by the anticipated accounting opinions, the Office of the Provincial Controller will prepare the Province's consolidated financial statements based on public sector accounting standards.
- At this time, the Auditor General (AG) has not identified any concerns related to the accounting for the social programs or the Affordability Fund; however, the AG has voiced concerns regarding the planned accounting treatment for the OFHP as related specifically to the GA component which is expected to impact the Province's financial results for the first time in 2017-18. The AG has also publicly communicated her opposition to a change in the IESO's accounting policy to reflect rate regulated balances on its books. The Province supports the IESO's accounting treatment as more fairly presenting the economic substance of the entity's market-related activities.
- The AG is currently reviewing the Province's accounting analysis related to the Affordability Fund which reflects a $100M transfer payment to be reflected in the Province's 2016/17 Public Accounts.
- If the AG does not concur with the Province's accounting treatment, including the change in accounting treatment by the IESO, the AG may provide a qualifed audit opinion on the Provinces' financial statements in the Public Accounts.

Legal

- The ministry has stated the legal risk remains the same as identified at the May 10, 2017 Cabinet meeting regarding the *Fair Hydro Plan Act, 2017*, including and related to:

GA Refinancing

- In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.
- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.
- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

The Ministry has provided an update to key risks including mitigation strategies (see Appendix G). The overview of strategic risks, from May 9 2017 TB assessment note, has been brought forward providing context for the more operational nature of Appendix G.

In addition to the risks cited in Appendix G in the implementation of the OFHP, a number of supporting arrangements are being sought by the IESO and OPG, including the following:

Indemnities for OPG (Ontario Power Generation) and IESO

- OPG and IESO have requested indemnities from the Province for their respective Directors, Officers and employees in relation to their roles in the implementation of the OFHP. Ministry of Energy staff are putting together a section 28 approvals submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO.sw
    - IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
    - Draft materials from Energy state that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
    - Energy has confirmed in its draft request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.
- As currently proposed, the Minister of Finance will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

Provincial Support Agreement or Provincial Guarantee Agreement

- As part of the OFHP and in order to provide support to those with claims against the Financing Entity (i.e., planned to be the OPG Trust) and with the ultimate objective of providing the highest possible credit ratings (and corresponding impact on interest costs to the ratepayers), the Province has been asked to provide both a Service Guarantee and a Performance Guarantee to support obligations of the IESO and the debt instruments issued by the Financing Entity.

Additional Report Backs

The Ministry has been asked to provide an update on outstanding report backs from OFHP related previous submissions. Appendix H contains the table sent to the Ministry, update is still pending.

As indicated earlier, this assessment note recommends Energy provide, as part of the joint submission with MCSS tracking to July 25, 2017 TB/MBC, an overview of its strategy to significantly increase OESP enrolment.

Name of analyst:	James Strang/ Afshin Malekzadeh with input from OPCD, OFA and CoE	**Phone number:**	416-327-2071
Date:	June 24, 2017	**Log number:**	
Branch / Division:	GGPR / PEMD / Treasury Board Secretariat		

APPENDIX A: PROPOSED MINUTE

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Ontario Electricity Support Program (OESP)

a) To enable Ministry of Community and Social Services to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table.

On-Reserve First Nations Delivery Credit (FNDC)

a) A correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Implementation of Global Adjustment (GA) Refinancing:

a) Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
b) Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
c) Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
d) Provide further criteria related to the development and implementation of the financing plan by the FSM;
e) Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

ii) Recommend the following proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New General Regulation to be made under Part I of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*
b) Amendments to O. Reg. 197/17 (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA)

c) Amendments to O. Reg. 314/15 (Ontario Electricity Support Program) to be made under the OEBA

iii) Direct the Ministry to report back to TB/MBC with details of its overall strategy to substantially increase OESP enrolment, as part of the pending joint submission with MCSS to increase Social Assistance clients enrolled in OESP.

APPENDIX B: FINANCIAL TABLES

FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE					TABLE B1
		Fiscal Plan Basis			*Appropriations Basis*
$ Millions		**2017-18**	**2018-19**	**2019-20**	**2017-18**
Initiative cost		0.000	0.000	0.000	
Expense changes:					
	Oper	0.0000	0.000	0.0000	0.0000
	Oper	0.0000	0.0000	0.0000	0.0000
Total Fiscal Impact		**0.0000**	**0.0000**	**0.0000**	**0.0000**

APPENDIX C: OFHP OVERVIEW

Ontario Rebate for Electricity Consumers

The *Ontario Rebate for Electricity Consumers Act, 2016* will reduce electricity costs by 8 per cent on the amount before tax, an average savings of about $130 annually or $11 each month, for about five million residential consumers, farms and small businesses.

Eligible rural electricity ratepayers will receive additional relief, decreasing total electricity bills by an average of $540 a year or $45 each month.

Commercial, institutional and industrial ratepayers would also benefit from up to 34 per cent lower electricity costs through the expansion of the Industrial Conservation Initiative.

Details:

- The province is reducing costs for eligible rural ratepayers by providing additional funding to the Rural or Remote Rate Protection (RRRP) program.
- The Industrial Conservation Initiative (ICI) provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by up to one-third. Ontario intends to expand ICI to help reduce cost pressures on the electricity system and enable more consumers to reduce their electricity bill by up to one third.
- Ontario has removed the Debt Retirement Charge from residential electricity bills and introduced the Ontario Electricity Support Program (OESP) to provide a monthly credit to low-income households who have applied and meet the eligibility requirements to help reduce electricity costs.

Fair Hydro Act

The *Ontario Fair Hydro Act, 2017* reduces electricity bills for all residential consumers and as many as half a million small businesses and farms, starting this summer. Lower-income Ontarians and those living in eligible rural and northern communities will receive even greater reductions, as much as 40 to 50 per cent. As part of this plan, rate increases will be held to the rate of inflation for four years.

These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills. Taken together, these changes are delivering the largest reduction to electricity rates in Ontario's history. To facilitate these immediate savings, the legislation:

Details:

- Enables the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) to work together to spread out the costs of Ontario's clean energy investments over a longer period of time, which ensures that the costs of these investments are allocated fairly among current and future ratepayers. This will be accomplished through refinancing a portion of the Global Adjustment (GA), resulting in significant and immediate rate reductions.
- Modifies and broadens the Ontario Electricity Support Program (OESP) to expand benefits and ensure it is funded by government instead of ratepayers, reducing bills for all.
- Enhances the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to a total of approximately 800,000 customers and shift costs from ratepayers to provincial revenues. The enhancement will benefit customers served by local distribution companies (LDCs) with the highest distribution rates. These savings will begin July 1, 2017.
- Provides on-reserve First Nations households serviced by licensed distributors with a 100 per cent credit of the delivery line on their monthly electricity bills, starting July 1, 2017.

APPENDIX D: PREVIOUS TB/MBC MINUTE (MARCH 1, 2017)

Approve electricity rate mitigation actions that support up to a 25% electricity bill reduction (including the 8% reduction announced in 2016) for an average household in 2017.

In this regard, the Board:

i. Direct the Ministry of Energy to implement electricity rate mitigation for all electricity consumers eligible to be billed under the Ontario Energy Board's Regulated Price Plan (RPP) and any other consumers who would be eligible for RPP if their electricity account was with a licensed distributor by:

   a) Subject to completed legal, accounting and financing risk assessments, refinance the Global Adjustment (GA) in order to partially defer RPP-eligible ratepayer GA costs by reducing projected after-tax electricity costs for a typical residential customer consuming 750kWh per month in 2017 by about 16%. Total projected bill increases will be kept in line with CPI until the end of 2021. From 2022 onwards, bills will increase at a rate that ensures gradual recovery of the accumulated debt by 2048, with escalation in subsequent years set above Consumer Price Index (CPI) in order to ensure that bill increases due to repayments are capped at around 10% of the total bill.

   b) Direct the Ministry to report back to TB/MBC by Spring 2017, prior to going to LRC with any legislation, on the approach to refinance Global Adjustment , including, but not limited to:

      - Formal accounting opinions from OPG and IESO auditors.
      - Completed legal, financing and accounting risk assessments. Assessments to include, but not limited to proposed legislation, technical aspects such as Eurig analysis, and risk to borrowing (in discussion with the OFA).
      - Report on the multi-year profile of GA smoothing, identifying specific assumptions.
      - Report on sensitivity analysis completed as assumptions vary, such as under different recovery rates and periods.
      - Overall risk mitigation plan addressing completed legal, accounting and financing risk assessments.

   c) If a non-fiscal mechanism cannot be established:
      1. Direct the Ministry to report back to Cabinet and TB/MBC with options for achieving a comparable level of electricity rate mitigation in the most cost effective way, in order to minimize the impact on the province's fiscal plan.
      2. Note costs to government of proceeding if cost of refinancing of Global Adjustment is recognized as an expense in the fiscal plan of up to $2,534,000,000 in 2017-18, $2,668,000,000 in 2018-19, $2,942,000,000 in 2019-20, $3,420,000,000 in 2020-21 and $3,232,000,000 in 2021-22.

ii. Broadening the Rural or Remote Rate Protection (RRRP) program to mitigate distribution charges for customers of Local Distribution Companies (LDC) with some of the highest distribution rates, and moving the program from a ratepayer funded program to a government funded program beginning in 2017, including:

   a) Harmonizing distribution cost for customers with the highest distribution rates (Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service

territory) and Northern Ontario Wires Inc) at the lowest distribution rate paid by the average consumer of the LDCs noted by fall 2017.

b) Note costs estimated at up to $459,000,000 in 2017-18, $472,000,000 in 2018-19, $484,000,000 in 2019-20, and $497,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to broaden RRRP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the broadened program now government funded
- Report on and assessment of impacts of consolidation of LDCs
- Assessment of distribution rates and implications for the program

iii. Expanding every benefit level of the Ontario Electricity Support Program by 50%, moving the program from a ratepayer funded program to a government funded program beginning in 2017 and pursuing additional measures to substantially increase take-up.

a) Note costs estimated at up to $186,000,000 in 2017-18, $261,000,000 in 2018-19, $325,000,000 in 2019-20, and $375,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

c) Direct the Ministry to work Treasury Board Secretariat (Behavioural Insights Unit, Centre of Excellence for Evidence-Based Decision Making) to accelerate/ maximize program uptake.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to expand OESP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Identify eligibility criteria, and refinements being made.
- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the expanded program now government funded.

iv. Establishing a new government funded Affordability Fund to provide energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs and who have difficulty paying their electricity bills.

a) Approve to commit up to $200,000,000 on a multi-year basis to support the Affordability Fund.

b) Direct the Ministry to report back to TB/MBC with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

v. Establishing a new province-wide government funded program beginning in 2017 that would eliminate the delivery charge for First Nations customers on reserve.

a) Note costs estimated at up to $20,000,000 in 2017-18, $20,000,000 in 2018-19, $20,000,000 in 2019-20, and $20,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

vi. Expanding the Industrial Conservation Initiative (ICI) by reducing the eligibility threshold to 500kW to enhance competitiveness for Class B manufacturers beginning July 2017.

a) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, results achieved to date versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vii. Direct the Ministry:

a) To work with Treasury Board Secretariat and the Ministry of Finance on the development of a comprehensive risk-based costing, including forecast models and sensitivity tests on assumptions and financial estimates, for the electricity mitigation initiatives.

b) To report back to TB/MBC through regular updates including quarterly reports and the 2018-19 Program Review, Renewal and Transformation (PRRT) on the status of implementation, and revised out-year expenditure requirements if applicable.

c) To continue to work with the Ontario Energy Board, the Independent Electricity System Operator and Ontario Power Generation, through the Long-Term Energy Plan 2017, to further reduce electricity rates across the system.

d) To work with the Ministry of Finance, Treasury Board Secretariat, Cabinet Office and Office of the Premier on an integrated communications strategy.

APPENDIX E: PREVIOUS TB/MBC MINUTE (MAY 9, 2017)

Receive a report back providing an update on current implementation status, including proposed legislation, of the Ontario Fair Hydro Plan, previously at TB/MBC March 1, 2017 and announced on March 2, 2017.

In this regard, the Board:

i) Note that the proposed Fair Hydro Act, 2017, includes:

Electricity Social Programs:

a) Establishment of a First Nation Delivery Credit for On-Reserve Consumers, funded from voted appropriations.
b) Establishment of new distribution rate protection program to eligible residential customers served by LDCs with the highest distribution costs, funded from voted appropriations.
c) Shift from costs recovered from ratepayers to funding out of voted appropriations for Ontario Electricity Support Programs.
d) Delayed proclamation for OESP once proposed amendments are passed until the IESO variance account for the program is close to wound down.

Global Adjustment Refinancing:

a) Establishes the fair allocation adjustment that gives the relief to certain specified consumers during the period July 1, 2017 to June 30, 2021 to ensure intergenerational fairness.
b) Requirement for future consumers to pay the clean energy adjustment that backs financings.
c) Sets out that the Financial Services Manager (OPG) prepares the Financing Plan establishing when a funding obligation should be incurred so that the OPG entity can raise money to acquire the Investment Interest.
d) Establishes the LGIC's power to authorize the Ministers of Finance and Energy to guarantee and indemnify any debts, obligations, securities or undertakings associated with the investment interest.
e) Sets out how the regulatory asset will be determined and how it can be converted into the investment asset, and the investment asset rights.
f) Sets out that security interests can be granted in investment interests in the investment asset.

ii) Recommend the proposed Fair Hydro Act, 2017 to proceed to Cabinet for approval.

iii) Note a new credit facility is being sought by the IESO from the Ontario Financing Authority to ensure that it has the flexibility to finance clean energy costs if for some reason the OPG Trust, at any time, does not purchase any portion of the deferred Global Adjustment amounts payments. An Order in Council to allow the Ontario Financial Authority to provide an expanded credit facility will be requested.

iv) Direct the Ministry of Energy to work with Treasury Board Secretariat and the Ministry of Finance/Ontario Financing Authority and report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments.

In this regard, direct the Ministry to:

a) Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different

demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.

b) Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.

c) To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.

d) To report back with updates to risk mitigation strategies that address key financial and operational risks.

v) Note the following outstanding report back requirements from March 1, 2017 minute:

a) Broadening RRRP – Direct the Ministry to report back to TB/MBC in 2017-18 on the effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
- Establishing program performance management framework including targets for the broadened program now government funded
- Report on and assessment of impacts of consolidation of LDCs
- Assessment of distribution rates and implications for the program

b) OESP – Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Identify eligibility criteria, and refinements being made.
- Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
- Establishing program performance management framework including targets for the expanded program now government funded.

c) Affordability Fund – Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

d) On-Reserve First Nations Delivery Charge – Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

e) Industrial Conservation Initiative – Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vi) Approve the Ministry to fund a media buy plan with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In this regard,

a) Note the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

b) Note the Ministry of Energy will return to request a transfer of funds of up to $2,500,000 in 2017-18 to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to recover costs for the public education campaign.

APPENDIX F: PREVIOUS TB/MBC MINUTE (JUNE 13, 2017)

Receive the first of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

a) Provides for a fixed monthly credit ($60.50), replacing the existing prescribed annual amount and making the escalating factor unnecessary; and,
b) Sets out a process that the Ontario Energy Board (OEB) will utilize to determine the maximum monthly distribution charge that all prescribed high-cost distributors will charge their customers; and,
    1) Sets out the proposed distributors as Atikokan Hydro Inc.; InnPower Corporation; Chapleau Public Utilities Corporation; Sioux Lookout Hydro Inc.; Northern Ontario Wires Inc.; Lakeland Power Distribution Ltd. (Parry Sound Rate Zone); Algoma Power Inc. (residential); and, Hydro One Networks Inc. (Low & medium density classified customers).

On-Reserve First Nations Delivery Credit (FNDC)

a) Defines eligibility as being restricted to those residential rate class First Nations customers who are members of a band as defined under the federal Indian Act;
b) Eliminates the delivery charge, or monthly service charge for those customers served by Local Distribution Companies (LDCs) that do not have a delivery charge, for on-reserve residential First Nations customers; and,
c) Defines eligibility currently affects 11 LDCs serving on-reserve consumers: Algoma Power Inc., Attawapiskat Power Corporation, Bluewater Power Distribution Corporation, Cat Lake Power Utility Ltd., Cornwall Electric Distribution, Hydro One Networks Inc. Hydro One Remote Communities Inc., PUC Distribution Inc., and Thunder Bay Hydro Electricity Distribution; Fort Albany Power Corporation; and Kashechewan Power Corporation.

Implementation of Global Adjustment (GA) Refinancing:

a) Supports the required calculations to be made by the OEB;
b) Provides the methodology that the OEB will use in applying reductions to eligible and non-regulated consumers who are eligible for GA refinancing;
c) Sets out the near-term reductions (i.e., the reductions that will be applied by the OEB from July 1, 2017 to April 30, 2018), as well as the reductions from May 1,

2018 to April 30, 2019. Further adjustments to be made for future periods beginning May 1, 2019 would be set out in further amendments the regulation; and,

d) Provides the Independent Electricity System Operator (IESO) with the necessary authority related to its activities, including the funding, borrowing and financial arrangements.

ii) Recommend the below proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New Regulation to be made under Part II of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*;
b) Amendment to O. Reg. 280/14 (IESO Eligible Investments and Borrowing) to be made under the *Electricity Act, 1998*;
c) New Invoicing Regulation to be made under the *Ontario Fair Hydro Plan Act, 2017*;
d) New Regulation (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA);
e) New Regulation (Distribution Rate Protection) to be made under the OEBA;
f) Amendments to O. Reg. 442/01 (Rural or Remote Electricity Rate Protection) to be made under the OEBA;
g) Amendments to the O. Reg 363/16 (General) to be made under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA); and,
h) Amendments to O. Reg. 275/04 (Information on Invoices to Certain Classes of Consumers of Electricity) to be made under the OEBA.

iii) Direct the Ministry to report back to TB/MBC with:

a) The details of additional proposed regulations with financial implications prior to proceeding to Cabinet for approval; and,
b) An update on previously minuted report back requirements.

APPENDIX F: DETAILS OF PROPOSED REGULATIONS

Partial Refinancing of the GA

The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the Global Adjustment (GA):

- Provide for the implementation of the roles and responsibilities of the Financial Services Manager (FSM)(i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
    - methodology for calculating the clean energy adjustment, the finance amount and the true-up amount;
    - required communications by FSM with OEB on clean energy adjustments for each reference period during the recovery period;
    - requiring that OEB use the FSM calculations of clean energy adjustment to determine a kWh amount for the clean energy adjustment for each reference period during the recovery period using IESO demand forecasts;
    - clarify FSM's ability to charge fees to the financing entities for the costs of its services and required activities under the OFHPA. FSM to submit methodology used for determining fees to the OEB for review and approval;
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
- Provide further criteria related to the development and implementation of the financing plan by the FSM;
    - reasonable assumptions and additional principles and that the FSM must make or take into account, such as seeking to incur funding obligations on the best terms available and flexibility to cope with changes to future fair allocation amounts; and,
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

Social Programs

Ontario Electricity Support Program

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills.

The ministry is proposing amendments to O. Reg. 314/15 made under the OEBA to enable Ministry of Community and Social Services staff to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table. The amendment is in support of efforts to increase enrollment by reducing application burdens on target populations and enable the

development of automatic enrollment procedures for some populations already receiving other government programming.

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account (used when OESP was funded by electricity ratepayers) to government funding. This timing is consistent with previous submission and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Regulations supporting implementation were before the Board June 13, 2017.

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

Regulations supporting implementation were before the Board June 13, 2017.

APPENDIX G: MINISTRY'S UPDATE ON RISKS AND MITIGATION STRATEGIES

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • In order to obtain financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. **Update:** • Work is ongoing to finalize a draft term sheet that would serve as the basis for the Master Subscription Agreement between OPG/ENERGY and OFA. In addition, OFA and ENE to develop Service Level Agreement for monthly cash management services.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry, IESO, OPG and other ministries have worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line. **Update:** • The legislation and proposed general regulation were developed with input from third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the Global Adjustment (GA). • OPG is continuing to work through the mechanics of securing financing (e.g., engaging rate agencies, etc).

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			• In addition, in order to provide assurances to those with claims against the "Financing Entity" (e.g., 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 IESO are carried out including obligations related to collecting and remitting clean energy adjustments. Working is ongoing.
Managing Interest Cost Risks	M	H	• OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%). **Update:** • The legislation and proposed general regulation were developed with input of third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the GA • The provincial guarantee as set out in legislation should provide comfort to dealers, thereby increasing the likelihood of achieving more favourable interest rates. • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
Provincial Guarantee is Triggered	L	H	• The legislation sets out that the province could provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also enables the Province to: o Through the Ministers of Energy and Finance upon approval by Lieutenant Governor in Council, agree to guarantee any debts and obligations; and **Update:** • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
IESO Failure to Establish a Regulatory Asset / Maintaining IESO Financial Viability	L	H	• Under the legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. • 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. **Update:** • IESO has received an accounting opinion from KPMG that concurs with IESO's view that it has

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			the ability to establish the regulatory asset. • In addition, OFA is planning to increase IESO's credit facility to support its role in implementing the OFHPA. OFA is proposing an OIC that would authorize the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.
Indemnities provided to OPG are triggered/called **(Not included in current June 27 submission)**	L*	H*	• Ministry of Energy staff are putting together a s.28 (under the Financial Administration Act) approvals package for submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan. o The indemnities are expected to provide coverage for both organizations and their respective Board members, officers and employees involved in implementing the plan. o As currently proposed, the Minister will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault. **Update:** • Work is ongoing to finalize the s.28 (under the Financial Administration Act) approval for indemnities. Note: There could be potential interactions between the provincial guarantees and the indemnities sought by OPG and the IESO, discussed below. A due diligence is currently ongoing by MOF Legal, OFA and Energy staff. A final draft indemnities package is pending.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. • Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax. • The legislation attempts to mitigate the risks identified above by requiring that the costs moved into the future align with the benefits that future rate payers will receive. To create the flexibility to achieve this requirement, the amounts of the costs and benefits will not be enshrined in the legislation. **Update:** • The legislation was designed to mitigate this risk.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			• The Fair Allocation Amount, the process for which is further clarified under general regulation, will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP)			
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting. • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program. • Social program regulations include provisions to require the IESO and the OEB to provide the Ministry with information required to update cost projections based on up-to-date figures.

APPENDIX H: UPDATE ON OUTSTANDING REPORT BACKS

Report back requirements	Expected Timing	Status (Pending from Energy)
Regulations - Report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14) Late June TB/MBC – Regulations for Global Adjustment (LRC/Cabinet – June 27)	
Global Adjustment Refinancing - Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.	August TB/MBC (TBC) – Sensitivity Analysis	
Sensitivity Analysis – Electricity Social Programs - Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.	August TB/MBC (TBC) – Sensitivity Analysis	
Electricity Social Programs and GA Financing - To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Risk Mitigation - To report back with updates to risk mitigation strategies that address key financial and operational risks.	TBD – potentially details would be in the Regulations submissions	
RRRP − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	

− Establishing program performance management framework including targets for the broadened program now government funded − Report on and assessment of impacts of consolidation of LDCs − Assessment of distribution rates and implications for the program		
OESP − Identify eligibility criteria, and refinements being made. − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers. − Establishing program performance management framework including targets for the expanded program now government funded.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Affordability Fund - Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.	Quarterly Reporting	
On-Reserve First Nations Delivery Charge - Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Industrial Conservation Initiative - Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.	Quarterly Reporting	

APPENDIX I: OVERVIEW OF RISK (CENTRAL AGENCIES PERSPECTIVE)

Prepared by TBS staff, the following chart provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

Global Adjustment Partial Refinancing:

Objective: Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising. • Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity. • Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements. • Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG. • Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end.

Risk	Level of Risk	Risk Response
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.
A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Medium **Risk Impact:** High **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and close monitoring of costs and changes in variables built into model. • Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Moderate **Time Scale:** 12 to 24 months **Rationale** • The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases. • Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing.	Risk can be avoided by: • Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure. Risk can be mitigated by: • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising. • Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity. • The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited. • An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG.
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.

Risk	Level of Risk	Risk Response
A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and ongoing monitoring of costs and changes in variables built into model. • Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** 12 to 24 months **Rationale** • The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases. • Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term.	Risk can be mitigated by: • Providing a "provincial guarantee" for the cost of borrowing. • Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption. • Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Electricity social programs (Enhancing Electricity Support & Conservation Programs):

Objective: Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

Risk	Level of Risk	Risk Response
Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province.	**Risk Likelihood:** Possible **Risk Impact:** Major **Timescale:** 12 to 24 months **Rationale:** • The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate. • Fiscal projection is highly dependent on factors which can fluctuate from year to year, including: o electricity usage; o distributions costs; and o consumer consumption patterns that may change due to extreme weather or other factors. • Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs. o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models.

From: John Kim
To: Ronald Kwan
Subject: Fwd: additional IESO Proposed Changes to OFHP Credit Facility
Date: Wednesday, July 12, 2017 8:04:36 AM

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mike Manning <Mike.Manning@ofina.on.ca>
> **Date:** July 12, 2017 at 7:06:28 AM EDT
> **To:** William Tan <William.Tan@ofina.on.ca>
> **Cc:** Sarah Harris <Sarah.Harris@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>, John Kim <John.Kim@ofina.on.ca>, Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject: Re: additional IESO Proposed Changes to OFHP Credit Facility**
>
> Hi William:
> I think we can accommodate 5 days.
> Thanks, Mike
>
> Sent from my iPad
>
> On Jul 11, 2017, at 5:26 PM, William Tan <William.Tan@ofina.on.ca> wrote:
>
> > Hello Mike,
> >
> > We have received an email proposing a new change with respect to the IESO Credit Requirement letter for the Fair Hydro Plan.
> >
> > Noted in the original IESO FHP request:
> > - <!--[if !supportLists]--><!--[endif]-->New $2 billion FHP Credit Facility
> > - <!--[if !supportLists]--><!--[endif]-->Reduction of the existing credit facility from $975 million down to $475 million. ($2.475 billion total credit facility)
> > - <!--[if !supportLists]--><!--[endif]-->5 year term, expires September 30, 2022.
> > - <!--[if !supportLists]--><!--[endif]-->Minimum 7 days, to a maximum of 95 days draw to minimize interest costs and permit efficient FHP asset transfers.
> >
> > Proposed change: minimum 5 days, to a maximum of 95 days draw.
> >
> > Mike, is the change from 7 days, minimum draw to 5 days, something we

can entertain from a capital markets perspective?

I am including Bruno, John and Salman as they may have thoughts from an Electricity Finance perspective (I understand Ronald Kwan was circulated the original IESO FHP Credit Requirement request).

Best regards,

Will Tan| *Documentation & Analysis Specialist*
Capital Markets Division | Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3, CANADA
Tel. (416) 325-8090 | Fax: (416) 860-8346
william.tan@ofina.on.ca

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

<mime-attachment>

<IESO_OFA FHP 2017 Credit Letter - SIGNED.DOCX>

From: Anthony Martinello
To: Ronald Kwan; John Kim
Cc: Victor Buza
Subject: IESO - OFA
Date: Tuesday, October 17, 2017 11:05:59 AM

Ronald/John,

Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.
DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	Gadi Mayman
Cc:	Anna Strathy
Subject:	IESO Credit Facility and Intercept Provision Exemption
Date:	Friday, September 15, 2017 1:56:50 PM
Attachments:	DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean_vFinalClean3.docx 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean3.docx

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Effective January 1, 2015, the Ontario Power Authority (the "OPA") and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to directives dated December 22nd, 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28th, 2016, the Minister approved and directed the OFA to make loans (the "Advances") to the OPA and the IESO after the Amalgamation from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA and IESO after the Amalgamation to meets its purposes.

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility of up to $2 billion to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

~~Minister of Finance~~

~~Per~~ _____

~~The Honourable Liz Sandals~~

~~President of Treasury Board~~

~~Alternate for the Minister of Finance~~

Charles Sousa

Minister of Finance

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE")
REQUIRED UNDER THE OFA'S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility).

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

<u>The IESO</u>

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act*, *1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

From: Ronald Kwan
To: Marianne Nguyen (MCYS)
Cc: Jonathan Tekle (CAB)
Subject: IESO Credit Facility
Date: Wednesday, August 16, 2017 4:18:40 PM

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

From:	Ronald Kwan
To:	Nancy Kennedy (MOHLTC); Scott Nelms (ENERGY)
Subject:	IESO Treasury Policy
Date:	Friday, June 23, 2017 4:08:41 PM
Attachments:	00 - IESO Finance Policy Update June 2017 Reg 280-14.pdf 05 - Item 8(iii) BLACKLINED Treasury Policy June 14 2017.pdf 05 - Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy.pdf 01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v3.docx 03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min_v2.doc 02 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-CEO-DM.docx

---

Hi Nancy, Scott,

As you may be aware, the IESO is required to have its Treasury Policy approved by the Minister of Finance, and it is being revised to accommodate the Fair Hydro Plan (as well as for size).

Attached is a draft BN, as well as IESO's request.

It's designed as coming through the OFA, as did the previous IESO treasury policies, as the OFA reviews for approval other designated agencies' treasury policies, so an FYI, and happy for any comments.

We aim to include this as part of the Minister`s briefing on Wednesday on the FHP.

Ron

June 15, 2017

Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

The Honorable Charles Sousa
Minister of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON
M7A 1Y7

Dear Minister:

Re: Independent Electricity System Operator ("IESO")
IESO Treasury Policy (version June 14, 2017)

Ontario Regulation 280/14 (the "Regulation"), as amended, prescribes requirements for the IESO regarding its treasury activities. The Regulation requires the IESO to adopt a statement setting out the IESO's investment, borrowing, and financial management policies and procedures (known herein as the "IESO Treasury Policy").

The IESO's Board of Directors approved the attached revised (*black-lined to highlight the changes made*) IESO Treasury Policy on June 14, 2017.

As required by the Regulation, the IESO submits the attached revised IESO Treasury Policy for your review and requests your approval of the same.

Please contact me (905.403.6944), Kimberly Marshall, IESO Chief Financial Officer (416.969.6232), or John Rattray, IESO General Counsel (416.506.2856) for any questions you or your staff may have regarding this request.

Sincerely,

Anthony Martinello
Director, Treasury and Pension Operations

Attachment: IESO Treasury Policy (version June 14, 2017)

cc: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Director~~Manager~~, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*TBills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- 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, in the early years of the plan a portion of the Global Adjustment charge to ratepayers will be deferred for recovery to the future and the IESO will incur a monthly funding shortfall, as.

- The IESO under the OFHP Act has a right to recover the deferred charges (or "regulatory asset"), which is expected to be sold by IESO to a financing entity established by OPG.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.
    - 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 legislation, OPG's SPV is not required to purchase any portion of the regulatory asset.
    - The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.

- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 23, 2017

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

Attached for your review and consideration is the Independent Electricity System Operator's (IESO) updated Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
   - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
   - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A 1Y7

(416) 325-8000

June 26, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: Minister's Approval of IESO's Treasury Policy

Attached for your review and consideration is a memo to the Minister of Finance recommending the Minister of Finance to approve the Independent Electricity System Operator's (IESO) Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
    - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Attached is a briefing note for your consideration, as well as an approval letter for the Minister's signature. OFA staff are available should you require a further briefing or have any questions.

Gadi Mayman

Attachments

c. Ronald Kwan

From:	Gavin He
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir
Subject:	IESO and OFA - FHP Line of Credit Facility Directive
Date:	Tuesday, June 27, 2017 2:01:22 PM
Attachments:	01 - IESO-OFA - FHP Line of Credit Facility_MinDirective - BN v2.docx 02 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo CEO-DM.doc 03 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo DM-Min.doc 04 - Directive IESO FHP 2017 v5.docx

---

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

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 Provinces 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.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If IESO cannot sell the asset created by the shortfall to a Financing Entity as prescribed in the *Ontario Fair Hydro Plan Act, 2017*, the IESO will have this revolving debt that can only be repaid once and if the Ontario Energy Board makes a decision to increase the rates the ratepayers pay to pay for the debt.

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

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

Ontario

June 25, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Minister's Directive to OFA to provide IESO a Credit Facility Extension**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister direct the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

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.

…2

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

Attached is a briefing note for your consideration, as well as a Lending Directive for the Minister's signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province’s cost of funds plus a twenty-five basis point spread and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Directive to OFA to provide OPA a Credit Facility Extension**

Attached for your review and consideration is a Minister's Directive to the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act").

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.

…2

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

Attached is a briefing note for your consideration, as well as a Lending Directive for the your signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province's cost of funds plus a twenty-five basis point spread and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

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.

DRAFT

../2

- 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:

Charles Sousa
Minister of Finance

DRAFT

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Deena Padamadan; John Kim; Salman Qadir
Subject:	IESO credit facility
Date:	Tuesday, May 09, 2017 11:42:46 AM
Attachments:	Requirements for the OFA to lend to the IESO v8.docx

Hi Ron

See attached note on IESO new credit facility. Note that the proposed OIC is for a credit facility up to $3b, while the draft IESO letter requests $1.5b. The OIC could be for the higher amount (just in case), but the Minister's directive could stipulate a lower amount.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

REQUIREMENTS FOR THE OFA TO LEND TO THE IESO

IESO staff have noted that IESO may need to cover clean energy costs if for some reason the Trust, at any time, chooses not to purchase a portion of the deferred Global Adjustment amounts under the proposed Fair Hydro Act. The legislation does not compel the Trust to purchase 100% of the regulatory asset at any given time.

As the Ontario Financing Authority ("OFA") currently provides a $975 million credit facility to the IESO for other purposes, it is proposed that the OFA provide a new credit facility to the IESO, in an amount of up to $3 billion [TBC].

The use of this credit facility for a length of time could pose a potential fiscal impact to the Province upon consolidation of IESO.

Approvals Required for OFA Financing

- As per subsection 3(1) of the *Capital Investment Plan Act, 1993*, ("CIPA") the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.
- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA if authorized by the LGIC. Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under 22(1).
- Under subsection 6(3) of CIPA, the OFA may only borrow under authority of a by-law approved by the Minister of Finance. The OFA's General Borrowing and Financing By-Law (By-Law #12), authorizes the OFA to "*…borrow from the Minister of Finance, such amounts as the Minister of Finance is authorized by order in council to lend to the Corporation.*"
- In order for the OFA to lend money to IESO, the OFA on-lends the loan from the Minister of Finance.

The following approvals are required by the OFA to accommodate the request to provide financing to the IESO:

1) An Order-in-Council is required for the Minister of Finance to lend to the OFA.
2) A Directive from Minister of Finance is required for the OFA to on-lend to the IESO.
3) An executed credit agreement between the OFA and the IESO.

1. Order-in-Council (OIC)

An OIC is required to authorize the Minister of Finance to lend to the OFA. Ministry of Finance Legal Services Branch would need to be engaged to facilitate the request.

- The existing $975 million credit facility was covered under OIC 675/97 which authorized the Minister of Finance to lend a revolving $2.16 billion to the OFA.

This OIC was originally obtained in 1997.

It is understood that upon drafting the OIC (by MOF Legal), the OIC would need final approval from Lieutenant Governor in Council LGIC as required under section 22(1) of the *Capital Investment Plan Act*, 1993.

- The OIC would go through Deputy Minister of Finance, Minister of Finance, Chair of Cabinet for briefing/sign-offs and finally to the LGIC for approval.

To draft the OIC, the following details will be required:

i. Dollar Value of Loan from the Minister of Finance to the OFA
ii. Maturity Date of the Loan
iii. Interest Rate of the Loan

The following are recommended to accommodate IESO's need for financing:

i. <u>Dollar Value of Loan:</u>
$3 billion, as per request. The OIC would provide the maximum limit of any loan to IESO and it may be advisable to add a cushion and provide an OIC for $3.5 billion.

ii. <u>Maturity Date of the Loan:</u>

A maturity date of March 31, 2048 would provide approximately 30-year term to match the Fair Hydro Plan. It may be advisable to add a cushion and set a maturity date to March 31, 2053 (cushion of 5-years).

iii. <u>Interest Rate of the Loan</u>

Interest rates on the loans from the Minister of Finance to the OFA have typically been a 1) Ontario 90-day t-bill rates, 2) flow-through of the rates charged to the third-party by the OFA and/or 3) the rate charged to the third-party by the OFA less 25bps.

It is recommended to keep this unchanged to provide consistency with past OICs but also to provide flexibility in the rates that could potentially be charged to IESO, to be determined by the Minister of Finance, by way of the Minister's Directive.

2. Minister's Directive

Once the Minister of Finance has the authority under an OIC, a Minister's Directive can authorize the OFA to lend to the IESO. The Directive can outline specific terms

and conditions as needed.

3. Executed Credit Agreement

With a Minister's Directive approved, the OFA and IESO can work to execute a credit agreement, subject to any terms and conditions of the Directive and any policy considerations.

- Specific terms and conditions such as interest rate on the loan from the OFA to the IESO is still to be determined.

Other Considerations

A consideration can be given to provide the loan to IESO directly from the Minister of Finance. Considering the following key points, it may, however, not be the most direct approach:

- The OFA has provided a line of credit to the IESO and deviating from this would raise questions as to why status quo was not followed.
- A statutory appropriation exists for loans from Minister of Finance to the OFA. If the Minister of Finance was to provide a loan directly to the IESO, it would be necessary to find other appropriation for this loan.

Corporate and Electricity Finance Division, OFA
May 8, 2017

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid; Gavin He
Subject: IESO-OEFC Note_v3Clean.docx
Date: Friday, November 17, 2017 10:16:19 AM
Attachments: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

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 for the security agreement. 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 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 the OFA to make the same request 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*.

- With the 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 flown-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.]

- The OFA included the requested changes in the OFA credit facilities, providing a precedent of having considered the changes/inclusion of the same request. Treating the current request differently by

Commented [GH1]: We mentioned the security agreement in the above paragraph already, so we don't think we need to mention this again here.

Commented [JK2]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [GH3]: Would you be able to list out some key differences related to this scenario?

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.

RECOMMENDATIONS

- In order to remain consistent with the language recently incorporated in existing IESO-OFA agreements, OFA staff are of the view that the exisiting 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 15, 2017

From:	Anthony Martinello
To:	Ken Kandeepan; John Psinas; John Kim; Ronald Kwan
Subject:	IESO_OFA FHP 2017 Credit Letter
Date:	Monday, May 15, 2017 11:09:31 AM
Attachments:	IESO_OFA FHP 2017 Credit Letter.docx

fyi

From: Georgia Ritchie-Wust
Sent: May 12, 2017 2:08 PM
To: gadi.mayman@ofina.on.ca; mike.manning@ofina.on.ca; Salman.Qadir@ofina.on.ca
Cc: Anthony Martinello; Kim Marshall
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 12, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the proposed Fair Hydro Plan (FHP) to reduce electricity prices for eligible consumers in the province. Proposed legislation was introduced this month for the FHP. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that in order to support the IESO's role in FHP implementation it will need greater credit liquidity than currently exists.

An existing credit facility between the IESO and the Ontario Financing Authority (OFA) is currently available for $975 million which includes support for the current Regulated Price Plan (RPP) program. The IESO proposes that a separate and additional credit facility be provided by either the OFA or Ontario Electricity Financial Corporation (OEFC) to support only the FHP credit needs. A separate facility for the FHP is preferable to ensure operational efficiency and interest tracking.

IESO's FHP Credit Requirements and Rationale

Below we have outlined the IESO's expected credit needs including the current OFA facility as follows:

	OFA:IESO Facility	New FHP facility
Current credit facilities	$975 million	$ -
Reduction due to FHP	($500 million)	$ -
Increase due to FHP	$ -	$2,000 million
Totals Credit Facilities	$475 million	$2,000 million

The above $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. In addition, the IESO has had recent discussions with OFA staff to explain the rationale to support the overall $2,000 million FHP commitment.

We suggest the new FHP credit facility consider the following key provisions:

- 5 year term - to align with the FHP's initial period of deferral of electricity prices plus a contingency period (i.e. to September 30, 2022);
- interest charge - to be Province's cost of funds for borrowing with a similar term as determined by OFA / OEFC plus 0.25 percent per annum;
- Draws - to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers; and
- Existing $975 million OFA facility : draws to permit for FHP purposes until a new separate credit agreement for FHP purposes has been made available;

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facilities and we will provide such evidence for your records.

We appreciate your continued support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: Ronald Kwan
To: Malle Hanslep (MOF); John Kim
Subject: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 9:32:21 AM

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara; Shajee Kathirgamanathan
Subject:	Intercept Exemption Directive
Date:	Wednesday, August 16, 2017 9:31:07 PM
Attachments:	01 - IESO-OFA - FHP LoC - Intercept Directive v5.docx DIRECTIVE Aug 16 V2.docx

---

Hi Ron,

Pls. see attached note on the request and the draft directive OFA Legal has drafted. The second piece is very much work in progress but should be finalized tomorrow. We tried to reflect Malle's feedback to Lisa and also provide an alternate paragraph as a suggestion.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package

John

Y. John Kim
Director, Electricity Finance Branch
Corporate & Electricity Finance Division
Ontario Financing Authority
Ph: 416-212-6996
Email: john.kim@ofina.on.ca

~~IESO FAIR HYDRO PLAN CREDIT FACILITY~~

MINISTER OF FINANCE DIRECTIVE TO EXEMPT THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE") REQUIRED UNDER THE OFA'S LENDING POLICY

The Independent Electricity System Operator (IESO) requested a revolving credit facility ("the 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"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

On June 29, 2017, the OFA received a Lending Directive from the Minister of Finance to accommodate the IESO's request.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt both current and proposed IESO credit facilities from the Intercept Provision.

- Note: The Intercept Provision under the OFA's Lending Policy for unsecured lending to a public body requires that, unless exempted by the Minister of Finance [or Treasury Board or Cabinet], the OFA ~~to~~ put in place a provision whereby the OFA is entitled to deduct amounts equal to any amounts the public body fails to pay to the OFA under the loan, from money appropriated by the Legislature for payment to the public body.

Formatted

RECOMMENDATION

- OFA staff recommend the Minister sign the Intercept Exemption Directive allowing the OFA to exempt the IESO from the Intercept provision of the OFA Lending Policy.
  - This will enable the IESO fulfil 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.
  - ~~Note: The Intercept Provision under the OFA's Lending Policy for unsecured lending to a public body requires that, unless exempted by the Minister of Finance [or Treasury Board or Cabinet], the OFA to put in place a provision whereby the OFA is entitled to deduct amounts equal to any amounts the public body fails to pay to the OFA under the loan from money appropriated by the Legislature for payment to the public body.~~
  - The Intercept Provision has no practical usefulness in the case of the IESO as it receives no operational funding from the Province. Appropriations of the Ministry of Energy for payment to the IESO are for settlement of payments for energy programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc. Intercepting these program specific payments merely facilitated by the IESO, in order to recover loan payments would not be in alignment of the intent of the OFA's Lending Policy.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Intercept Provision outlined in the OFA Lending Policy from the revolving credit facility to the IESO [per Directive signed on June 29, 2017].

- [The Intercept Exemption Directive would also exempt any lending to the IESO from the OFA, previously authorized and/or subsequently amended, to be exempt from the Intercept Provision.]

Commented [SK81]: This is to ensure both the 2B and 475M credit facilities are covered.

FISCAL IMPACT

- There would be a relatively small but positive fiscal impact for the Province as a result of the credit facility and the Intercept Exemption Directive is not anticipated to change this.
  - The Province receives a small fiscal benefit by adding 25 basis points (i.e., 0.25%) to the Province's cost of funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.

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
August 17, 2017

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

The Independent Electricity System Operator ("IESO") is a public body for the purposes of CIPA.

Pursuant to a directive from the Minister dated June 29, 2017, the OFA was directed to provide a revolving credit facility to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision would entitle the OFA to deduct money appropriated by the Legislature for payment to the IESO, if not specifically exempted by a direction from the Minister of Finance.

[As the IESO receives no fund~~sing~~ in the form of grants or transfer payments from the ~~Province of Ontario~~Ministry of Energy pursuant to its annual appropriation, there is no funding to which the intercept provision applies.]

[ALTERNATE TO PARAGRAPH ABOVE:

The Intercept Provision has no practical usefulness in the case of the IESO as it receives no operational funding from the Province. Appropriations of the Ministry of Energy for payment to the IESO are for settlement of payments for energy programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc. Intercepting these program specific payments merely facilitated by the IESO, in order to recover loan payments would not be in alignment of the intent of the OFA's Lending Policy.]

Therefore:

The OFA is not required to include an intercept provision in its OFHP Credit Facility agreement with the IESO, nor in any other existing unsecured loan agreements with the IESO.

Commented [LS1]: CEFD to review/confirm.

Commented [SK82]: Two related arguments for the Directive.

Suggest picking one and ensuring the one chosen is then copied over to the Briefing Note to ensure consistency.

Dated , 2017

Charles Sousa

Minister of Finance

From: Anna Strathy
To: Ronald Kwan
Cc: Usman Zahid
Subject: Meeting with Energy
Date: Monday, June 11, 2018 12:28:41 PM
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

To: Gadi Mayman; Mike Manning
Subject: OEFC-IESO Credit Facilities and Amendment
Date: Tuesday, November 28, 2017 11:02:09 PM
Attachments: IESO-OEFC Note_v8.docx

Hi Gadi, Mike,

Staff updated the BN on the IESO request to amend the OEFC credit facilities for permitted liens.

Staff heard from the IESO today that without the terms of the OEFC facilities being amended this week, it would need to ask for an interim waiver from the OEFC to avoid being in default. If feasible, it may make sense to simply go ahead with amending the facilities for permitted liens instead.

Ron

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.

- On November 28, 2017, IESO staff wrote to staff that without the terms of the OEFC facilities being amended, it would need to ask for an interim waiver from the OEFC to avoid being in default.

CONTEXT

- 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 sought and received 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 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.
  - 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.
  - 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.

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against 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.
  - The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount 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, the loan and the credit facilities are "subject to such other terms as OEFC deems appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permited liens on November 6, 2017.

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 exisiting 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 28, 2017

From: Ronald Kwan
To: Gadi Mayman; Mike Manning
Subject: OEFC-IESO Credit Facilities and Amendment
Date: Wednesday, November 29, 2017 8:15:42 AM
Attachments: IESO-OEFC Note_v8.docx
ATT00001.htm

Hi Gadi, Mike,

Staff updated the BN on the IESO request to amend the OEFC credit facilities for permitted liens.

Staff heard from the IESO yesterday that without the terms of the OEFC facilities being amended this week, it would need to ask for an interim waiver from the OEFC to avoid being in default. If feasible, it may make sense to simply go ahead with amending the facilities for permitted liens instead.

Ron

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.

- On November 28, 2017, IESO staff wrote to staff that without the terms of the OEFC facilities being amended, it would need to ask for an interim waiver from the OEFC to avoid being in default.

CONTEXT

- 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 sought and received 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 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.
  - 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.
  - 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.

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against 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.
  - The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount 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, the loan and the credit facilities are "subject to such other terms as OEFC deems appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permited liens on November 6, 2017.

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 exisiting 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 28, 2017

From: Anna Strathy
To: Ronald Kwan
Cc: Angie Georgakakos; Gavin He
Subject: OFA ARMC Meeting
Date: Tuesday, May 16, 2017 9:41:17 AM

Hi Ron,

As discussed, the next OFA ARMC Meeting – where the AG suggested a presentation on the FHP – is June 16 from 9:00-11:30am. Sarah Neville will follow up directly with you regarding the minute.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From: Ronald Kwan
To: Anna Strathy
Subject: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 4:32:02 PM

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: Ronald Kwan
To: Ken Kandeepan
Subject: OFHP Deck
Date: Saturday, June 10, 2017 3:19:12 PM
Attachments: OFA ARMC - FHP Briefing (2017 06 01 v18_clean).pptx

---

Hi Ken,

As you know, it was suggested that there be a presentation on the FHP for the OFA Board/ARMC.

Attached is a work-in-progress deck that staff are working on. It does not get into great detail, outlining the elements of the FHP, with a bit more on the GA financing structure and the OFA touchpoints on borrowing for the equity injection and notes the credit facility for IESO. Risks are also high-level, and it does not get into accounting risk, leaving that discussion as one between the AG and Province, as was positioned at the OEFC AC. I might think there may be verbal discussions.

Comments welcome.

Ron

DRAFT

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

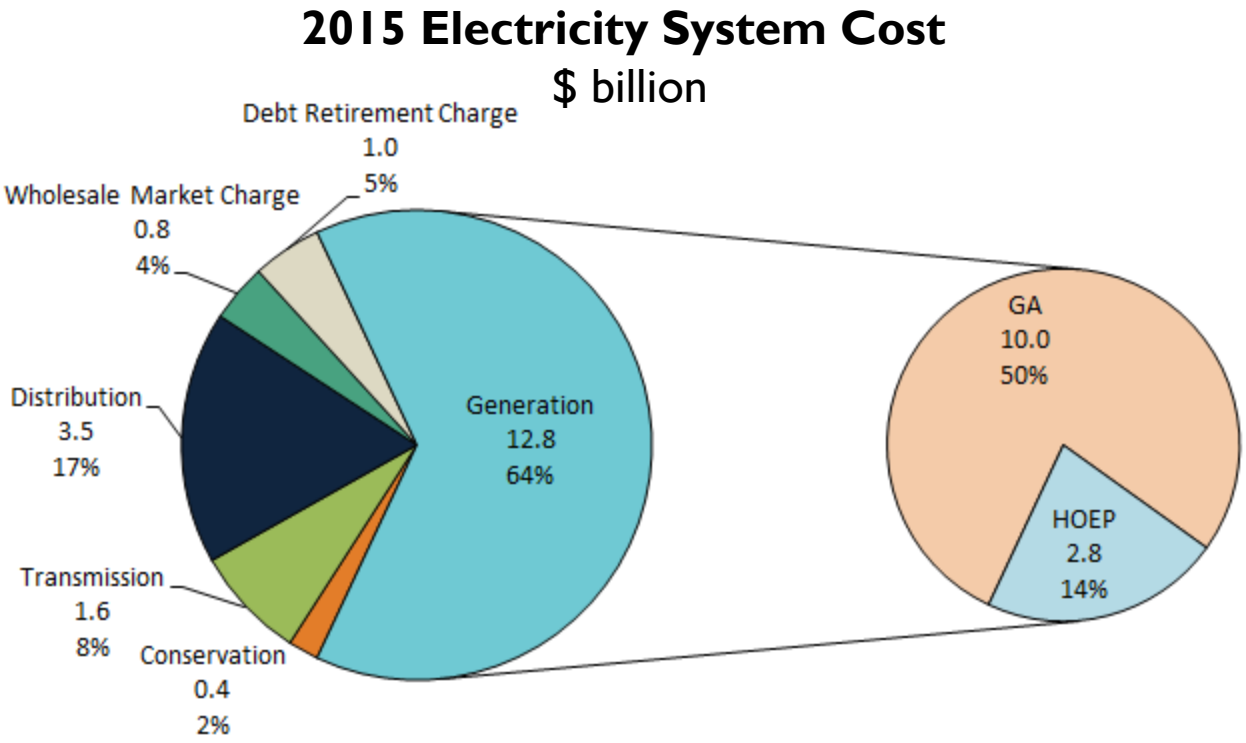
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

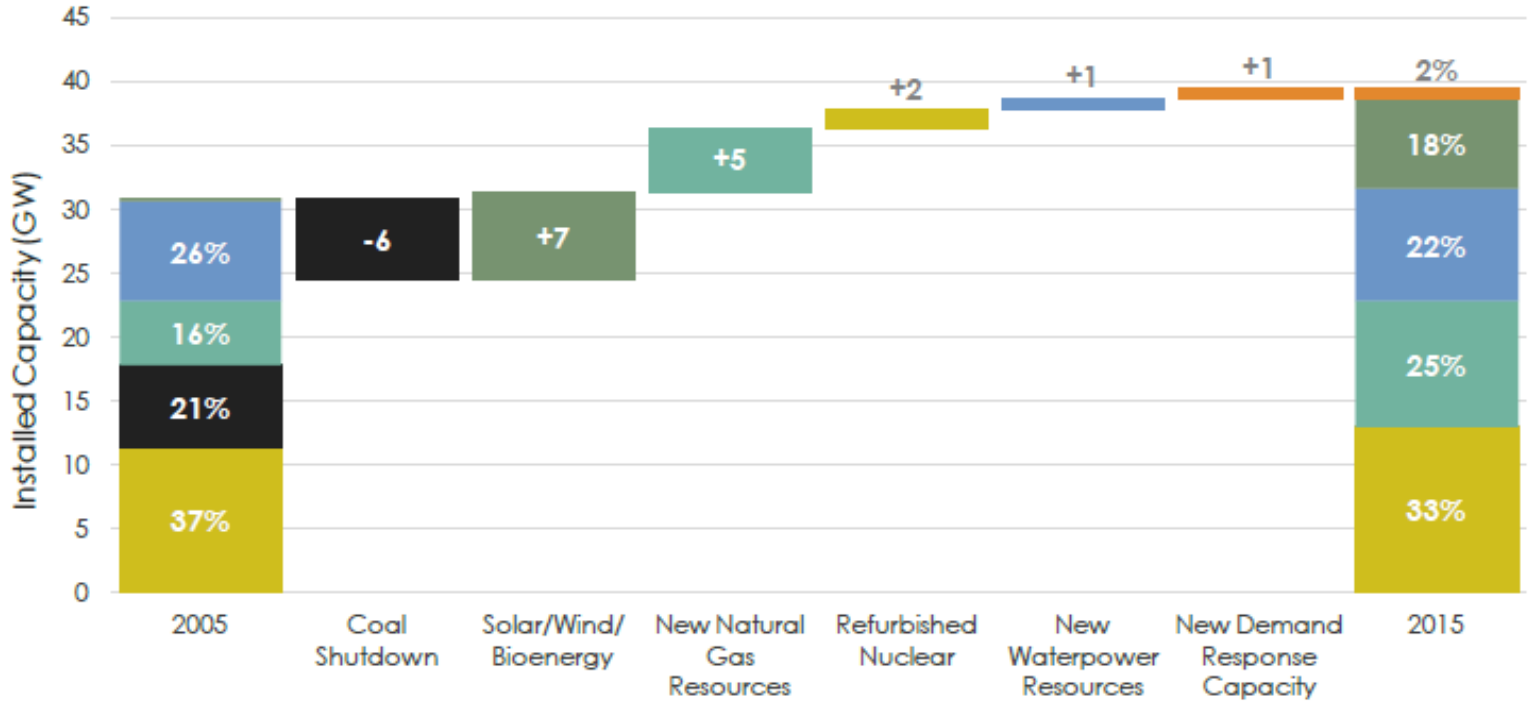
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

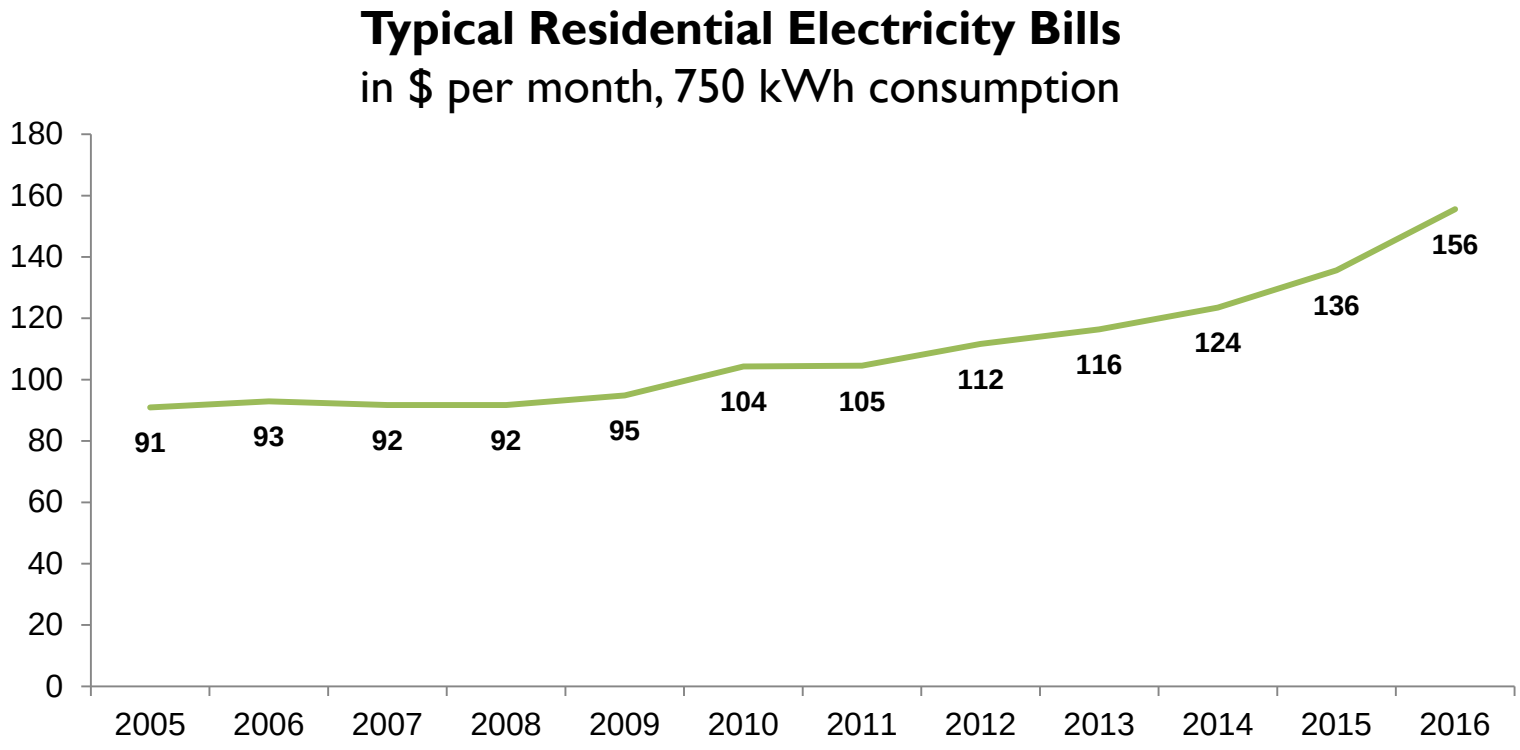
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

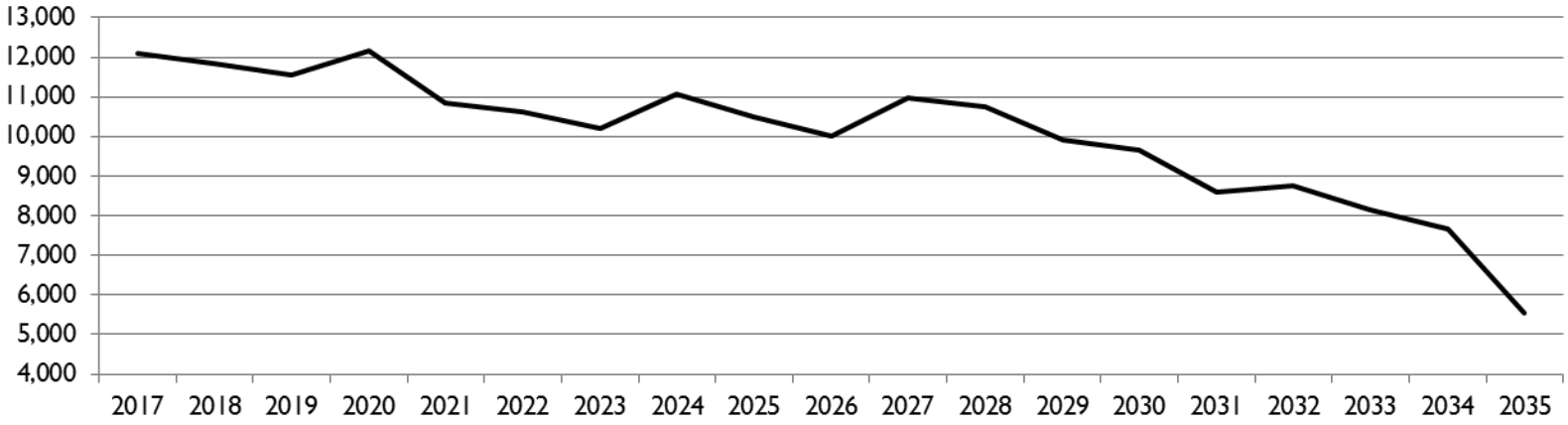
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

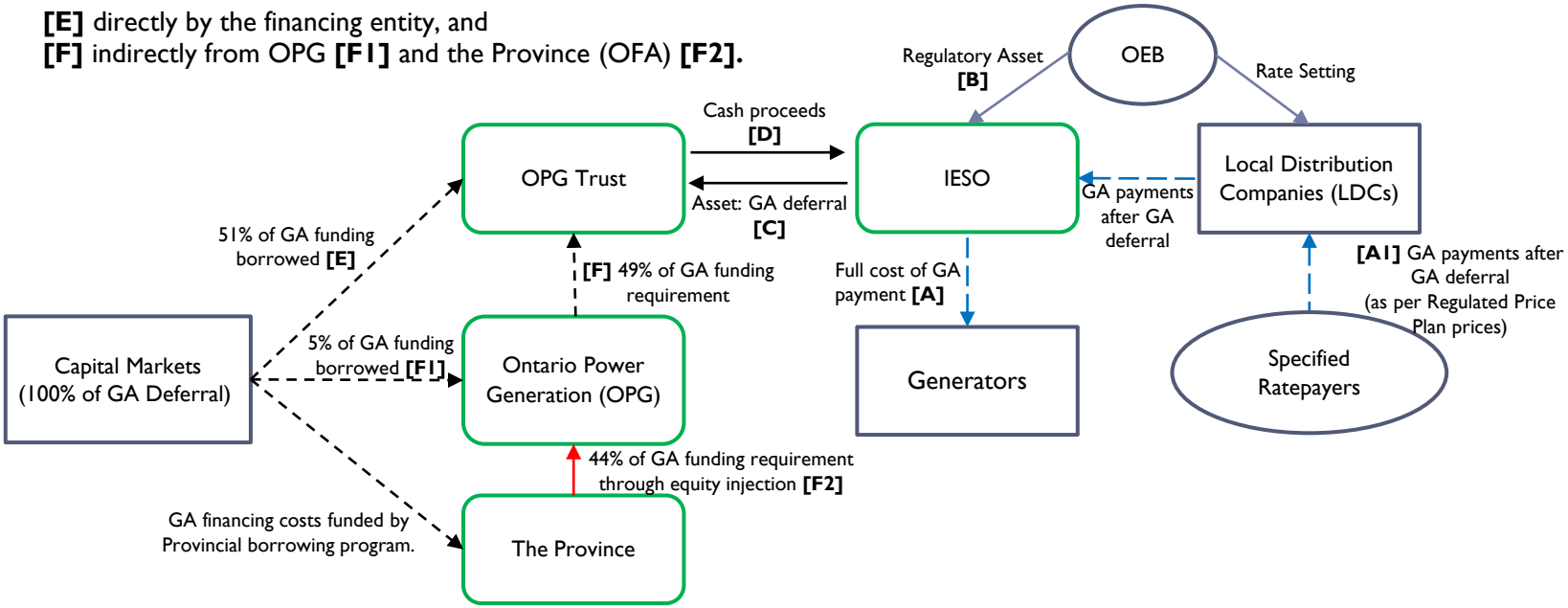
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

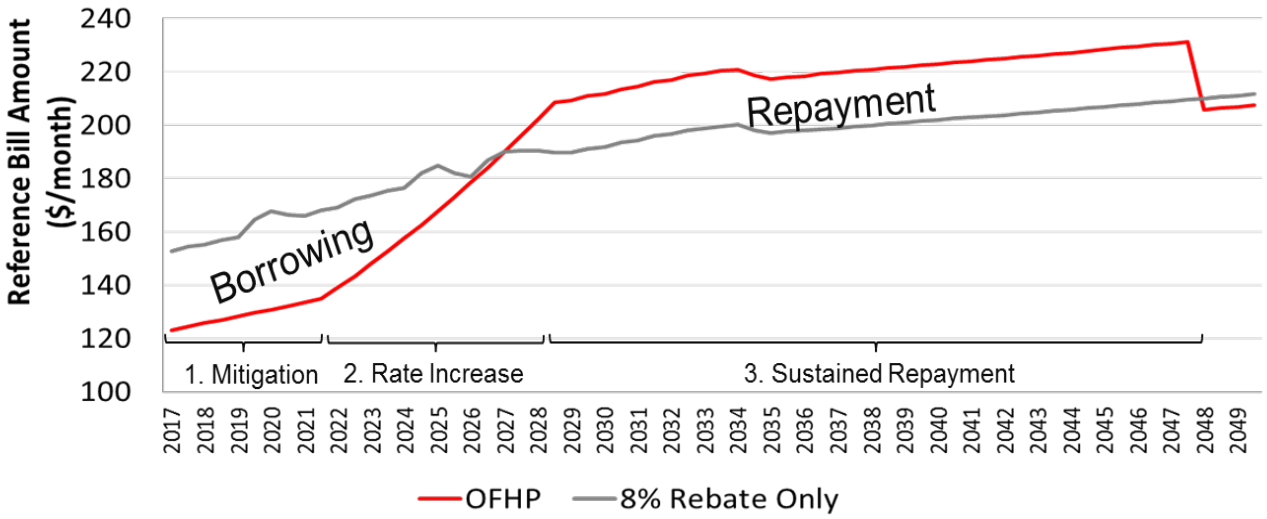
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments)
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG **[F1]** and the Province (OFA) **[F2].**



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

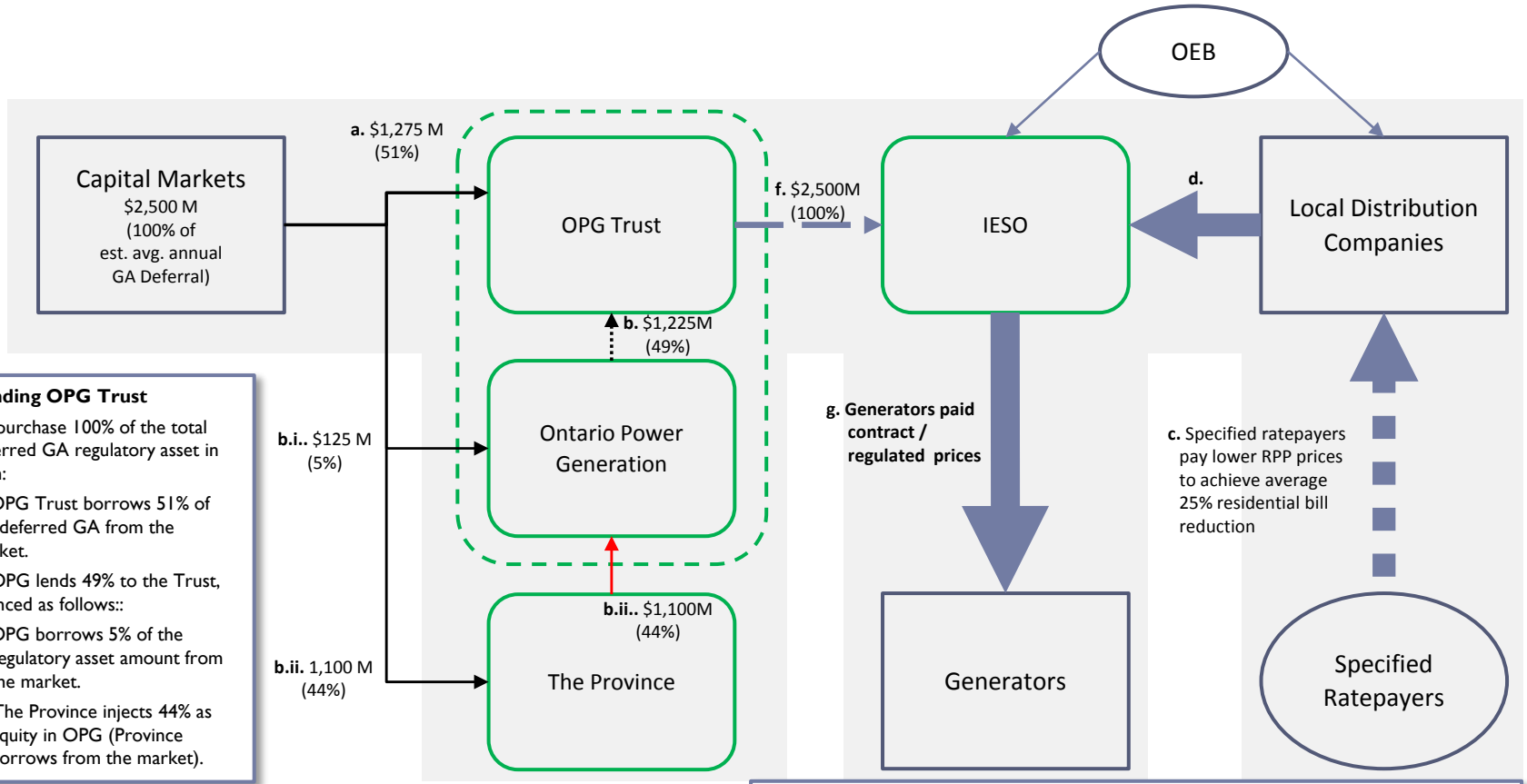
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill remains higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference represents deferral of GA and financing.

DRAFT

GA Financing Structure: Fund Flows - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

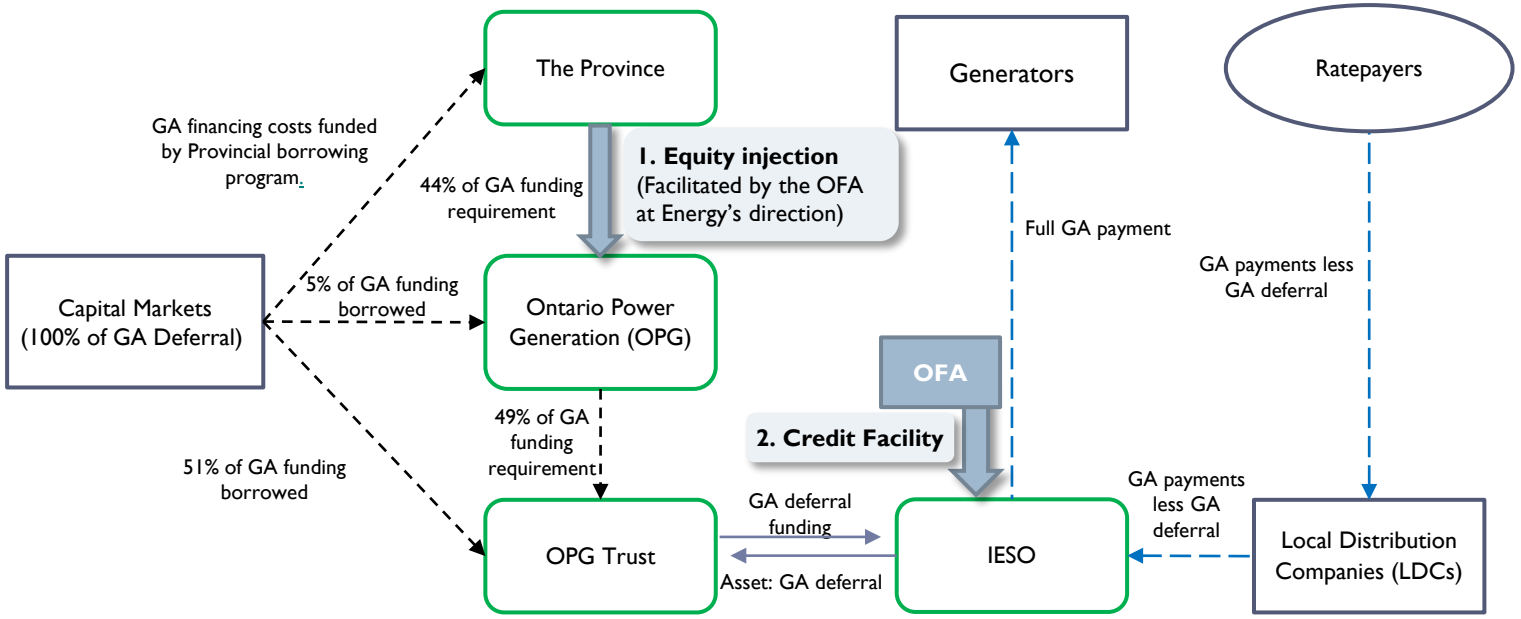
e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

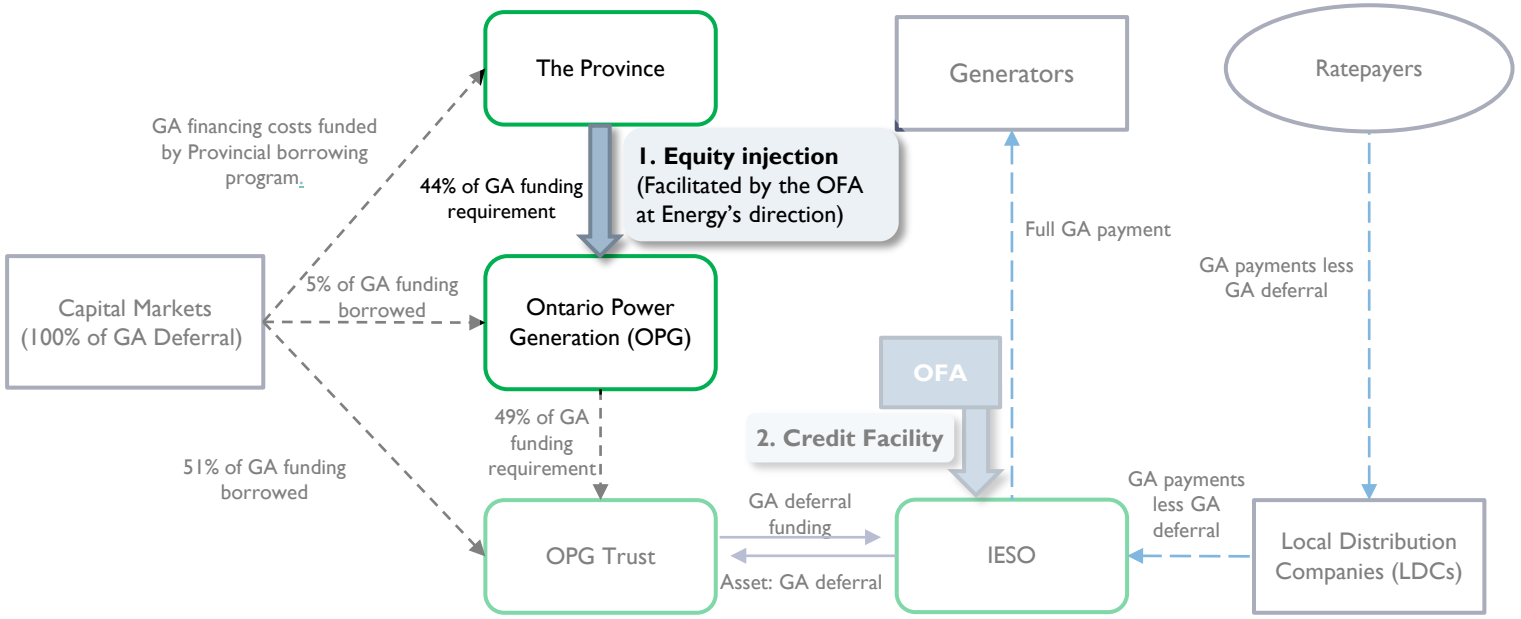
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO
- The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded.



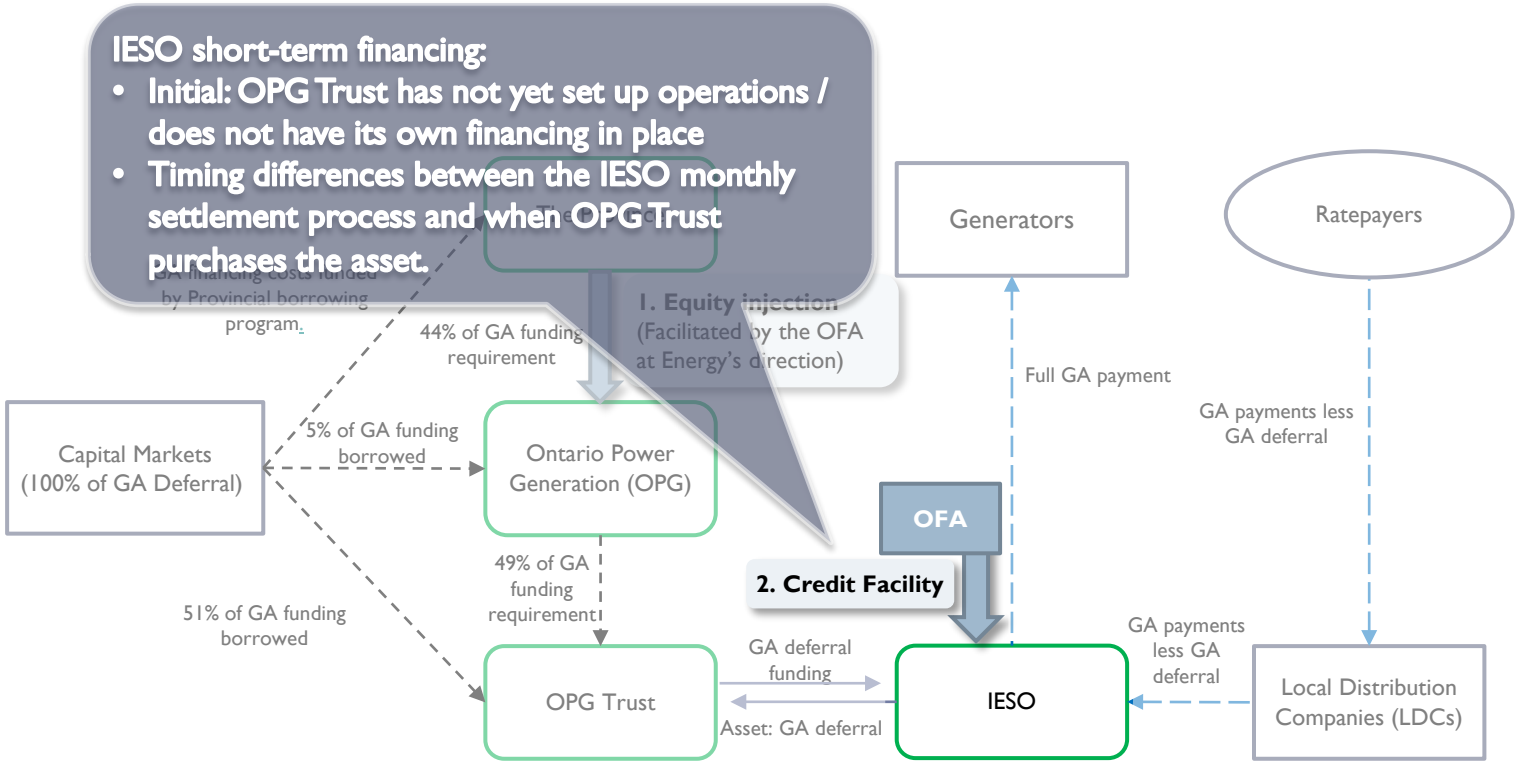
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1B related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which would be
  - offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

DRAFT

GA Financing – Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir
Subject:	OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx
Date:	Saturday, June 10, 2017 3:30:20 PM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx

---

Hi Ron,

Pls. see attached latest briefing note on the request for indemnities. The section added by Toby, I think, is very helpful.

On the accounting, we were thinking of sharing this with OPCD and have them add a section, if they wish to do so. Also, we discussed internally to share this with CMD and/or FTD as they are doing fair bit of work on that front.

Thanks,

John

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

- The Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.

RECOMMENDATION

- IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("MENE") states that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
- MENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Commented [A1]: Is this expected, and when? Do we have a draft?

Commented [SQ22]: We have asked for this, language will be updated once details are received by MENE

Commented [JK3]: TBD

Commented [A4]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Where does it say that the likelihood of indemnity being called upon is low?

Commented [JK5]: MOF Legal: Put it right up front. Need a bit of a narrative – what we [Energy] believe and why.

p. 5, is inconsistent.

Supplementary appropriation should deal with it. E.g, ORPAC Board indemnity

Commented [A6]: Is TBS okay with this?

Commented [JK7]: Energy hasn't really said it so they would need to put it explicitly.

Commented [SQ28]: From MOF Legal.

The indemnity is being given in favour of "Protected Persons" which comprises OPG, each of OPG's subsidiaries [NTD: We have not received confirmation of whether the financing entity is a subsidiary of OPG] and each of their respective directors, officers and employees.

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount that they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim, including a broad range of types of damages. This also includes punitive and a broad range of types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for defending themselves. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnity also does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

The Indemnity Agreement includes a waiver of claim provision, which is not a normal provision for an indemnity agreement. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (ie, does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan. This does not apply to claims for willful misconduct, dishonesty or gross negligence.

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement. This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

ANALYSIS

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors,

officers and employees, from all claims, liabilities, costs, losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals in relation to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHP (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or a subsidiary).

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase of the deferred assets ("regulatory assets") under the Global Adjustment ("GA") structure.

MENE states that the OFHP Act activities of both OPG and the IESO would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could affect OPG and IESO's willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Key Comments:

Commented [A9]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [JK10]: Wait to hear back from Energy on the Qs and comments sent last Thursday.

Commented [JK11]: Comments from MOF Legal:

Even if Board has indemnities from OPG, wouldn't be able to cover as is not in the best interest of corporation.

MOF Legal: up to Energy to tell us. OPG must have given Board members the normal indemnities.

Bruce Lease one covers the not in the best interest of corporation.

OBCA indemnity: immunity from suit. May indemnity corp directors and officers. Limited to indemnity in good faith. Other specifi provisions exist in EA and FHA.

IESO covers quite a bit. Including Board, directors, employees.

Employee of the Prov or OPG – interpretation question to Energy.

Commented [A12]: Fair to insert?

Commented [JK13]: Everyone is OK, i.e. MOF Legal and EFB members

Commented [A14]: Would Energy change this to "historical" in its business case?

Commented [JK15]: MOF Legal: OPG Board appears to be concerned some would say not in good faith despite objects being changed.

Commented [A16]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [JK17]: IESO is indirectly involved. Not clear EA 19(1) for IESO. Unclear whether it'd protect from US suit. OFA Board also raised. MOF Legal: this is a valid point.

Commented [A18]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Commented [JK19]: Who is that person.

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are requesting to be indemnified for their activities that may be found to have not been conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected to carry out activities under the OFHP that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability. Statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees".

- Since OPG is an Ontario Business Corporations Act (OBCA) corporation, directors and officers of OPG are subject to the standard set out in that Act which includes a limitation on indemnities from corporations, whereby indemnities can only be given to the extent that the directors and officers carried out their activities in good faith and in the best interest of the corporation. The proposed Provincial indemnity, however, would not be restricted to that standard. ~~[NTD: Should this reference the OBCA standard?].~~
- The standard applicable to directors of IESO is set out in s. 12 of the Electricity Act, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. So the standard is similar for both OPG and IESO directors.
- The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation. Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

> *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or*

Commented [A20]: I think we need to include a subsection on existing indemnities, and when the proposed indemnities would not apply.

And lead this sub-section with the protections under statute, and why they may not be considered sufficient – claims on "good faith" as a question of fact to be considered by a court if a claim is brought forward.

And we should mention the waiver too.

Commented [SQ221]: Agreeing with MOF legal, we will be asking MOE to provide this analysis.

Commented [A22]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Commented [A23]: Spell this out first time?

Formatted: Justified, Bulleted + Level: 1 + Aligned at: 0" + Tab after: 0.28" + Indent at: 0.28"

the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

2. Potential for Fiscal Exposure of the OFHP Act

With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

~~[NTD: Should include a section that is more descriptive of the content of the proposed indemnity agreement too including exceptions for dishonesty, gross negligence and wilful misconduct, the issue re: due diligence as well as the waiver and the broad scope of the types of damages covered.~~

Commented [A24]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

Commented [JK25]: MOF Legal will put - What exactly is the content of the indemnity, etc.

Commented [SQ226]: See above from MOF legal, "Summary of Proposed Indemnities"

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer relative to what the bills would otherwise have been without the OFHP.
- The proposed 25 per cent rate relief includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- Changes to the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP.
- The government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.

Prepared by: Corporate and Electricity Finance Division, OFA

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

From:	Ronald Kwan
To:	Steen Hume (CAB)
Subject:	OIC and IESO Financing
Date:	Wednesday, June 07, 2017 3:52:49 PM
Attachments:	1 - CIPA - OIC s22 - OFA_LRC Approval Form.docx 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE (002).docx

---

Hi Steen,

As you'll recall, we are moving forward with OIC to expand the OFA's borrowing authority to facilitate the IESO's request for a credit facility from the OFA.

Attached is a draft approval form, which discusses this in reference to the FHP. Any comments you might have would be welcome.

As noted last week, the OIC itself is just on expanding the Province's ability to lend to the OFA (so that the OFA has the borrowing room to provide the facility), and the FHP is not mentioned in the OIC.

Ron

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the authority of the Minister of Finance to lend to the OFA which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017* as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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, therefore, 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 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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.

- 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.

- 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*.

- It is proposed that the OIC authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 billion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

_____

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Gavin He
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan; Salman Qadir
Subject: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 11:18:45 AM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v6.doc
2 - CIPA - OIC s22 - OFA_FHP - LRC_Memo CEO to DM v3.doc
3 - CIPA - OIC s22 - OFA_FHP - LRC_Memo DM to Minister v3.doc
4 - CIPA OIC s.22 May 2017 (v.2) - ENG and FRE.DOCX

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the OFA in an amount of up to $3.5 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and June 30, 2053.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- This proposed OIC is required to allow the OFA to provide loans to the IESO and will help to fulfil the commitments under the proposed Fair Hydro Act, 2017. The timing of this OIC is critical to ensure borrowing authority for the OFA is available as it will be required to provide financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA will be lending to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would incur a funding shortfall in the early years as a portion of the Global Adjustment charge to ratepayers will be deferred to the future. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO to sell the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset"). It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG SPV"). The cash received would be used by the IESO to fund the current Global Adjustment shortfall. The proposed legislation, however, does not require the OPG SPV to purchase any portion of the regulatory asset. As a result, IESO requires short-term financing to be in place in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. This short-term financing may also be required before the OPG SPV is operating and before it has its own financing in place to purchase the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change, therefore, it is proposed that the OIC authorization be $3.5 billion to ensure that there is sufficient contingency in place once the implementation begins.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- The Minister of Finance will be required to provide a Directive to the OFA to direct it to make loans to the IESO in an amount not to exceed $3.5 billion.

s. 3 **Direction and Urgency**

- As announced on March 2, 2017 and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in implementing the proposed *Ontario Fair Hydro Plan Act, 2017*.

- Regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be approved concurrently as it is a crucial component of the successfully implementing the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction on how the OFA can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

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

Ontario

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's approval and signature is an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's proposed *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would incur a funding shortfall in the early years as a portion of the Global Adjustment charge to ratepayers will be deferred to the future. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO to sell the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset"). It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG SPV"). The cash received would be used by the IESO to fund the current Global Adjustment shortfall. The proposed legislation, however, does not require the OPG SPV to purchase any portion of the regulatory asset. As a result, IESO requires short-term financing to be in place in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

../2

The OFA obtains the funding it needs to carry out its lending program by borrowing from the Province. This proposed OIC authorizes the Minister of Finance to lend up to Canadian $3.5 billion to the OFA. In addition, in order for the OFA to make the loan to the IESO, a direction from the Minister of Finance under CIPA will also be required.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered on June 27, 2017 together with proposed submission related to the proposed *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Attachment

c. Ronald Kwan, ADM, Ontario Financing Authority
John Kim, Director, Electricity Finance Branch, Ontario Financing Authority

Ministry of Finance
Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances
Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister of Finance

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for your approval and signature is an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's proposed *Ontario Fair Hydro Plan Act, 2017.*

Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would incur a funding shortfall in the early years as a portion of the Global Adjustment charge to ratepayers will be deferred to the future. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO to sell the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset"). It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG SPV"). The cash received would be used by the IESO to fund the current Global Adjustment shortfall. The proposed legislation, however, does not require the OPG SPV to purchase any portion of the regulatory asset. As a result, IESO requires short-term financing to be in place in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

../2

The OFA obtains the funding it needs to carry out its lending program by borrowing from the Province. This proposed OIC authorizes the Minister of Finance to lend up to Canadian $3.5 billion to the OFA. In addition, in order for the OFA to make the loan to the IESO, a direction from the Minister of Finance under CIPA will also be required.

Staff of the Ontario Financing Authority are available to address any questions you may have regarding this matter.

Scott Thompson

Attachment

c. Gadi Mayman, CEO, Ontario Financing Authority
Ronald Kwan, ADM, Ontario Financing Authority

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Three Billion Five Hundred Million Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Three Billion Five Hundred Million Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by June 30, 2053;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de trois milliards cinq cent millions de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de trois milliards cinq cent millions de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 30 juin 2053;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From:	Whitfield, Tobias P. (MOF)
To:	Ronald Kwan; John Kim
Cc:	Malle Hanslep (MOF)
Subject:	OPG indemnity
Date:	Monday, June 05, 2017 4:10:22 PM
Attachments:	RE OPG Indemnity.msg

We have been advised that TBS wants Finance to deal with this indemnity. Also, it appears that the TBS staff who were dealing with this are not available for a few weeks.

Energy has revised the initial indemnity proposal with OPG, in the attached email. We are reviewing this and would like to discuss the indemnity with you to formulate a position and response.

Could you please send us any material that TBS had shared with you?

Thanks
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: Multani, Harkamal (ENERGY) [Harkamal.Multani@ontario.ca]
To: Paul Kaufman (MOHLTC) [Paul.Kaufman@ontario.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]; Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]; Lisa Compagnone (MGS) [Lisa.Compagnone@ontario.ca]
Subject: RE: OPG Indemnity
Date: Friday, June 02, 2017 17:39:10

Hi all,

OPG has come back with the following revisions to the waiver provision and section 2(c):

Waiver:

"6.The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to gross negligence or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan."

Section 2(c):

-

"(c)if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "wilful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder (and in the event of any such finding, a court of competent jurisdiction in a

final, non-appealable judgment must determine that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity in order for a Protected Person to be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct); or"

-

On the waiver, OPG appears to indicate that they are fine with carving out acts of willful misconduct and gross negligence, but would like to keep the waiver in for all other circumstances since the indemnity would cover those circumstances.

While we are still waiving our rights, this is likely a much lower risk to the Province because it would not make sense to bring a claim against OPG for acts we would be indemnifying them for. Overall, it may be okay to accept with some further edits to clarify that the waiver is specific to acts covered under the indemnity, but I wanted to see if you have any concerns with this language still?

On the second point they have clarified the provision so that it is specific that it's purpose is to clarify that a finding that the due diligence defence does not apply does not prima facie mean that this finding alone constitutes gross negligence or willful misconduct (a court would need to make such further finding).

I think this is better than the previous language, but would want to clarify the language to be very specific that this does not mean we will indemnify them where we otherwise would not under the agreement.

Could you please let me know if you see any outstanding concerns with OPG's revised language? If you would like to further discuss, I would be happy to set up a call on Monday/Tuesday.

Thank you,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: May-26-17 3:27 PM
To: Kaufman, Paul (TBS)
Cc: Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); Compagnone, Lisa (TBS)
Subject: RE: OPG Indemnity

Thank you very much for this everyone. This has been very helpful.

I'll keep you posted on where we land on this.

Many thanks,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-26-17 3:11 PM
To: Multani, Harkamal (ENERGY)
Cc: Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); Compagnone, Lisa (TBS)
Subject: RE: OPG Indemnity

Harkamal, please see below in red for our responses.

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-26-17 11:37 AM
To: Kaufman, Paul (TBS); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Subject: OPG Indemnity

Hi Paul, Malle, Tobias,

Thank you for speaking to me yesterday about the OPG Indemnity. We are discussing the indemnity provisions I flagged for you yesterday internally and I've been asked to prepare a briefing note explaining why certain provisions that OPG has inserted are problematic from the Government's perspective. I am wondering if you could provide me with a short rationale on why the following provisions would be problematic from MOF/TBS's perspective for the purposes of informing my rationale on these provisions:

1) The Part of Provision 2(c) which essentially states that if a Protected Person is found not to have conducted a reasonable investigation of the securities documents (i.e. where the due diligence defence under securities law fails), the Province does not intend for this failure to constitute a "gross negligence" or "willful misconduct" and such failure would thus not disqualify the Protected Person from receiving indemnification – I believe we discussed yesterday that this provision may not be enforceable from a public policy perspective. I am wondering if you could clarify and also provide a short rationale as to why this provision is problematic and not recommended from MOF/TBS's perspective. OPG's proposed amendment would require the Province to indemnify the protected persons even where those persons did in fact engage in gross negligence or

wilful misconduct (including, potentially, criminal activity). It is quite atypical for an indemnity to protect a party in these situations, as the protected party would basically be insured against their own intentional wrongdoing or wanton acts by the Province. Indemnifying OPG and its directors, officers and employees in respect of situations where they engaged in wilful misconduct (and to a lesser extent, gross negligence) would remove any incentive for the protected persons to act reasonably in carrying out activities that are within the scope of the indemnity. The point about enforceability is more of a consideration than definitive advice that this term would definitely not be enforceable – i.e. you should consider that courts may decline to enforce a contractual provision that could be seen as purposefully facilitating an illegality. In discussing provisions of indemnities for underwriters, such indemnities have not been enforced where the underwriters have had knowledge of material misstatements or omissions made with respect to a public offering, and even where there was only negligence. This is outlined in Estey's text on opinions. Although not settled law in Canada, this may be unenforceable.

2) The waiver provision (Provision 6) in the attached. We discussed yesterday that this is quite an onerous provision for the Province to agree to. Could you please provide a further rationale as to why this provision is problematic and not recommended from an MOF/TBS perspective? The waiver provision would require the Province to waive any claim that it could make as a shareholder that relates "in any way" to OPG's/its subsidiaries'/other protected persons' acts or omissions in carrying out the FHP. This provision does not carve out gross negligence or wilful misconduct on the part of Protected Persons and could preclude the Province from taking any action against OPG directors if, for example, they engaged in criminal or other illegal activity that resulted in adverse consequences for the Province.

I've been asked to prepare and finalize a briefing note on this matter today, so it would be very much appreciated if you could get back to me as soon as possible today (I apologize for the tight timelines).

Many thanks for all of your assistance.

Thank you,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From:	Strang, James (TBS)
To:	Ronald Kwan
Cc:	John Kim; Felix Fung (MOF); Paul Kaufman (MOHLTC)
Subject:	OPG/IESO Indemnities - Section 28 Approvals
Date:	Tuesday, May 23, 2017 9:59:23 AM
Attachments:	OPGIESO Indemnities - Section 28 Approvals.msg FW OPGIESO Indemnities - Section 28 Approvals.msg s28 BN - OPG IESO Indemnities v2.doc

---

Hi Ron,

Energy is preparing a s28 FAA approval request related to OPG and IESO requests for indemnities related to their roles in implementing Ontario Fair Hydro Plan.

I've attached a draft note that is based on the draft materials provided in the second email. The third email indicates a further request to broaden coverage of indemnities that Energy is working on.

Since this is related to global adjustment refinancing, including market offerings, the OFA should be providing advice, but not sure exactly who would be providing that advice regarding a s28 request.

I'm also recommending that should there be a decision to provide the indemnities, it be done under Section 22 of the FAA.

James

From: Multani, Harkamal (ENERGY) [Harkamal.Multani@ontario.ca]
To: Paul Kaufman (MOHLTC) [Paul.Kaufman@ontario.ca]
CC: Felix Fung (MOF) [Felix.Fung@ontario.ca]; James Strang (MOF) [James.Strang@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]; Tim Christie (ENERGY) [Tim.Christie@ontario.ca]
Subject: OPG/IESO Indemnities - Section 28 Approvals
Date: Tuesday, May 16, 2017 15:11:55
Attachment 1: 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINAL.DOCX
Attachment 2: 20170515-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx
Attachment 3: 20170515-IESO - Indemnity-DRAFT-cln.docx
Attachment 4: 20170515-Ontario Power Generation - Indemnity-DRAFT-cln.docx
Attachment 5: 20170515-OPG IESO ONFHP Indemnities - DM Memo -DRAFT-cln.docx

---

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP

The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.

Draft

As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM1]: OPG/IESO input required on this regarding the specific risks they are concerned about.

The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate

Draft

mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or

default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against OPG or IESO's directors, officers, and employees as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity

Draft

under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited specifically to claims arising in relation to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the director.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to claims:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that the protected person is actually so indemnified or covered under such policy or fund; or

(b) for which other indemnities are already provided to the protected person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

Draft

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

The Indemnities would not apply with respect to claims for which coverage is provided and paid under insurance, or which are covered by another indemnity already provided, for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities, or for claims arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

APPENDIX "B"

Contingent Liabilities

Request for Approval Pursuant to section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, its directors, officers and employees (the "Protected Persons") against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Plan.	The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, directors, officers and employees against any claims that may arise in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purpose entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnities are limited specifically to claims arising in relation to OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed. The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of these entities or persons.	Could jeopordize the successful implementation of the ONFHP.

DRAFT

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Plan.	The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity.	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purpose entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnities are limited specifically to claims arising in relation to IESO's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed. The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the IESO or its respective directors, officers or employees or is brought about by dishonesty, gross negligence or willful misconduct of these entities or persons. Statutory immunity is also provided to IESO's directors, officers and employees under section 19(1) of the Electricity Act, 1998. However, this statutory immunity does not eliminate risk completely.	Could jeopordize the successful implementation of the ONFHP.

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

A**ND WHEREAS** the Corporation, its directors, officers and employees may face risk of liability which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation of the Act.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, and employees (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"),

2. This indemnity does not apply with respect to Claims:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that a Protected Person is actually so indemnified or covered under such policy or fund; or

DRAFT

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:

(a) immediately and without delay deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims(s) that is in the possession or under the control of the Protected Person;
(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
(d) promptly take all necessary steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), the Protected Person shall co-operate fully with the Province in connection with the same, and the Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's

DRAFT

counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
)
in the presence of)
)
_____)
Name:)

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").

AND WHEREAS the Corporation, its directors, officers and employees may face risk of liability which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation of the Act.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, and employees (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by the Protected Persons arising specifically as a result of the Protected Persons' direct role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim"),

2. This indemnity does not apply with respect to Claims:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that a Protected Person is actually so indemnified or covered under such policy or fund; or

DRAFT

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. In order to be entitled to indemnification hereunder in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:

(a) immediately and without delay deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims(s) that is in the possession or under the control of the Protected Person;
(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
(d) promptly take all necessary steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), the Protected Person shall co-operate fully with the Province in connection with the same, and the Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's

DRAFT

counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of)
)
_____)
Name:)

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

[INSERT DATE]

MEMORANDUM TO: Helen Angus
Deputy Minister, Treasury Board Secretariat

FROM: Serge Imbrogno
Deputy Minister

RE: Request for section 28 approval of indemnities to Ontario Power Generation Inc. ("OPG"), Independent Electricity System Operator ("IESO) and its respective directors, officers and employees related to their role in carrying out the implementation of the proposed *Ontario Fair Hydro Act*, (the "Act"), if passed.

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") to provide indemnities to OPG, the IESO and their respective directors, officers and employees in relation to their roles in carrying out the implementation of the Act, if passed.

The indemnity relates to the roles these entities and their respective directors, officers and employees will play in the implementation of the Act, which was introducted in the legislature on May 11, 2017, if passed and enacted as legislation.The Minister of Energy (Minister) has been briefed and supports this request for approval.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified at this time.

Approval of these indemnities is requested by June 1, 2017. Failure to obtain approval could jeopardize the implementation of the Act and Ontario's Fair Hydro Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

DRAFT

Sincerely,

Serge Imbrogno
Deputy Minister

Enclosures

DRAFT

From: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
To: James Strang (MOF) [James.Strang@ontario.ca]
CC: Felix Fung (MOF) [Felix.Fung@ontario.ca]
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals
Date: Thursday, May 18, 2017 16:55:16
Attachment 1: 20170515-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT FINALPK.docx

---

James, FYI I got a call from energy legal on this – apparently OPG has asked for a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation). Energy isn't sure if they support this change in scope, but they are considering it and might send us revised materials. I told them that the argument that OPG and IESO are being asked to take on new lines of work that they aren't familiar with might not be as strong of a justification in connection with subsidiaries that are established for the express purpose of issuing securities, so that might require a discussion or at least an enhanced business case.

It also sounds like they are anxious to know if this will go to MOF instead of us (I told them direction is still pending) and for confirmation that we can get them an approval by June 1 if it stays with us (I told them that would depend on the availability of senior decision-makers and their willingness to sign off on this, but that it wouldn't fail for lack of effort at the staff level on your end or mine). I tried to reassure them that these requests can move quickly when they need to.

I didn't mention the potential section 22 option since we haven't talked to MOF about it.

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this

email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Kaufman, Paul (TBS)
Sent: May-18-17 4:24 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks, Harkamal. I had a few fairly minor comments on the business case, set out in the attached. Let me know if you want to discuss.

Paul

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)

Sent: May-17-17 5:27 PM
To: Kaufman, Paul (TBS)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Thanks very much Paul – we've asked OPG/IESO to provide us with specifics on the risks as they would be in the best position to advise on these. I am hoping to receive their input by tomorrow and will send to you accordingly.

On the timing of the security offerings, I am assuming you are asking about the security offerings to be made to the investors with respect to the special purpose entity. We don't have a certain date but generally I believe we are looking at some time in Fall 2017 (Tim/Kaitlin, please correct me if I am wrong on this).

If you have further questions, please let us know.

Best regards,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Kaufman, Paul (TBS)
Sent: May-17-17 4:50 PM
To: Multani, Harkamal (ENERGY)
Cc: Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Harkamal – we're still reviewing whether this might go to MOF instead of TBS, but in the interim had some questions from the information set out in the business case:

Can some examples of the risks associated with securities offerings (generally, typically)be provided, and on how Energy might mitigate those risks risk?

Also, can Energy provide info on timing of securities offerings (when expecting to be in the market)?

I'll have some more technical feedback that I'll likely get to you tomorrow.

Thanks,

Paul

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

This email contains privileged and confidential information intended only for the personal and confidential use of the recipient(s) named above. If the reader of this email is not an intended recipient, you have received this email in error and any review, dissemination, distribution or copying is strictly prohibited. If you have received this email in error, please notify the sender immediately by return email and permanently delete the copy you received. Thank you.

From: Multani, Harkamal (ENERGY)
Sent: May-16-17 3:12 PM
To: Kaufman, Paul (TBS)
Cc: Fung, Felix (TBS); Strang, James (TBS); Montgomery, Kaitlin (MOF); Christie, Tim (ENERGY)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Paul,

As discussed, I've attached our draft s.28 approval materials as well as the indemnity agreements for the IESO and OPG. We are also consulting further with OPG and IESO on providing input on the risks to them if the indemnities are not provided so there may be further changes to these materials based on comments from OPG/IESO. These materials are drafts for TBS legal/policy review and input before we finalize. Once we've addressed TBS' comments we will submit the finalized documents for formal s.28 approval.

As mentioned, we require the section 28 approval by June 1, 2017, so if there is anything we can do to assist with speeding things up, please let us know as we recognize these are tight timelines.

Also, I understand that this is to go to TBS for approval (this goes back to our conversation earlier, whether Finance or TBS needs to approve). Please let us know if you hear otherwise.

If you require anything else from us please let us know. I've copied our program area clients on this email as well.

Many thanks,

Harkamal

Harkamal Multani

Counsel

Legal Services Branch

ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca

Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

The Government is proposing to introduce legislation to enable the implementation of the ONFHP (the "Proposed Legislation"). If the Proposed Legislation is passed, the implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP if the Proposed Legislation is passed.

Commented [PMK1]: This seems out of date now.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 1, 2017. The Indemnities are required in conjunction with the coming into force of the Proposed Legislation, if passed.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO on the condition that such Indemnities shall only come into effect at the date upon which the proposed legislation is passed.

3. BACKGROUND

OPG – Role in Implementation of ONFHP

The OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP.

Draft

As part of ONFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity). It is likely that risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

Commented [HM2]: OPG/IESO input required on this regarding the specific risks they are concerned about.

The provision of the Indemnities to the IESO, OPG and their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP in the event that the Proposed Legislation is passed. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate

Draft

mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". This is further described in section (ii) below). If the indemnities are not provided, this could impact the OPG and IESO directors' willingness to undertake such activities jeopardizing the successful implementation of the ONFHP. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be covered under any other indemnity provided to OPG or IESO by the Province, or provided by OPG or IESO to their directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or

default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Proposed Legislation provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Proposed Legislation prohibits/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, so the risk of litigation is greater for these individuals in the even the Proposed Legislation is passed.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against OPG or IESO's directors, officers, and employees as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided or that will be provided if the Proposed Legislation is passed), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity

Draft

under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities is limited specifically to claims arising in relation to IESO and OPG's respective role in implementing the ONFHP in the event that the Proposed Legislation is passed.

4) The Indemnities do not apply with respect to claims for which coverage is provided and paid under insurance, for which indemnity is already provided and paid to the OPG or IESO or its respective directors, officers or employees, or is brought about by the dishonesty, gross negligence or willful misconduct of the director.

Commented [PMK3]: Why is the carve out limited to 'gross' negligence vs just negligence?

Commented [PMK4]: Small point, but I think this should say 'protected person' since people other than directors would be covered.

A contingent liability table is attached as Appendix "C"

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

The Indemnities would not apply with respect to claims:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that the protected person is actually so indemnified or covered under such policy or fund; or

(b) for which other indemnities are already provided to the protected person to the extent that the Protected Person is actually so indemnified by such indemnities;

(c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or

Draft

(d) arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

The Indemnities would not apply with respect to claims for which coverage is provided and paid under insurance, or which are covered by another indemnity already provided, for claims brought about by the dishonesty, gross negligence or willful misconduct of the persons protected under the Indemnities, or for claims arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the successful implementation of this plan in the event the Proposed Legislation is passed. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would give OPG and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

Indemnities to OPG/IESO – Implementing Proposed Ontario Fair Hydro Act (if passed)

ISSUE

OPG and IESO are asking for indemnities to the IESO, OPG (the entities) and their respective directors, officers and employees in order to allow them to carry out their roles in implementing the Ontario Fair Hydro Plan (OFHP).

The Ministry indicates both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").

May 18 update from TBS Legal – Energy decision pending on revised ask from OPG/IESO - a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation).

MOF RECOMMENDATION

Based on materials provided by ENERGY, TBS staff are deferring judgment based on the information provided in the transmittal letter from the DM, Energy and the supporting business case provided.

BACKGROUND

Blurb on OFHP….

The Ministry indicates for:

- OPG – GA refinancing would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity) and that associated risks are beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- IESO – proposed legislation would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the

OFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the OFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO.

FINANCIAL IMPLICATIONS

The Ministry's submission there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The Ministry indicates the risk to the Province of giving the Indemnities is undeterminable at this time (cannot be quantified), but that the exposure will be linked to the OPG special purpose entity's debt offerings" of accumulated deferred Global Adjustment costs.

From the latest TB/MBC submission, in 2017-18 deferred global adjustment is forecasted to be about $2.5B, of which 51% is to be financed directly in capital markets, and $49%, about $1.1B, in an equity injection to OPG from the Province, with additional OPG shares being given to the province as OPG's sole shareholder.

With the planned approach capping rate increases at 2% till 2020, total accumulated debt to be refinanced reaches a peak of $24.2B by 2027, financed by on-going Provincial equity injections and debt offerings into the market with subsequent collection of deferred amounts from ratepayers out to 2047 (See Appendix A). The Ministry indicates tentative timing for debt offerings to commence is Fall 2017.

The nature of the indemnities suggests ….. for example negative credit rating impact arising from OFHP.

Although the Minsitry indicates the risk associatied with providing the indemnities are undeterminable, the amount of accumulated debt is quite significant. This raises a question about whether the Ministry has sufficient appropriations in place for 2017-18 to enter into the agreement to provide the indemnities. Section xxx.x. of the FAA indicates

Currently there are no explicit appropriations for GA refinancing other than the $1.1B investment asset for the projected OPG equity injection requirements in 2017-18. There is about $500M in Transfer payments related for the Electricity Social Programs, having moved to being funded from voted appropriations starting in 2017-18.

An alternate approach may be to have, under Section 22.1 of the FAA, the LGIC authorize the Minister of Finance to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person. Should claim be made, a payment

of any amount could be made under Section 12 of the FAA, paid by the Minister of Finance from the Consolidated Revenue Fund.

Section 11

BUSINESS CASE

Why is the section 28 approval needed?

The Province is being asked to agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

How has potential Crown liability been limited by the proposed indemnity?

The indemnities would not apply with respect to claims:

- Where coverage is provided under an insurance policy or claims fund to the extent a protected person is covered by a policy or fund.
- Where other indemnities already exist for protected persons.
- Brought about or contributed to by a protected person's dishonesty, gross negligence or willful misconduct
- Arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty

Measures to mitigate risk with securities:

-
- OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds.
    - Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.
    - OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.

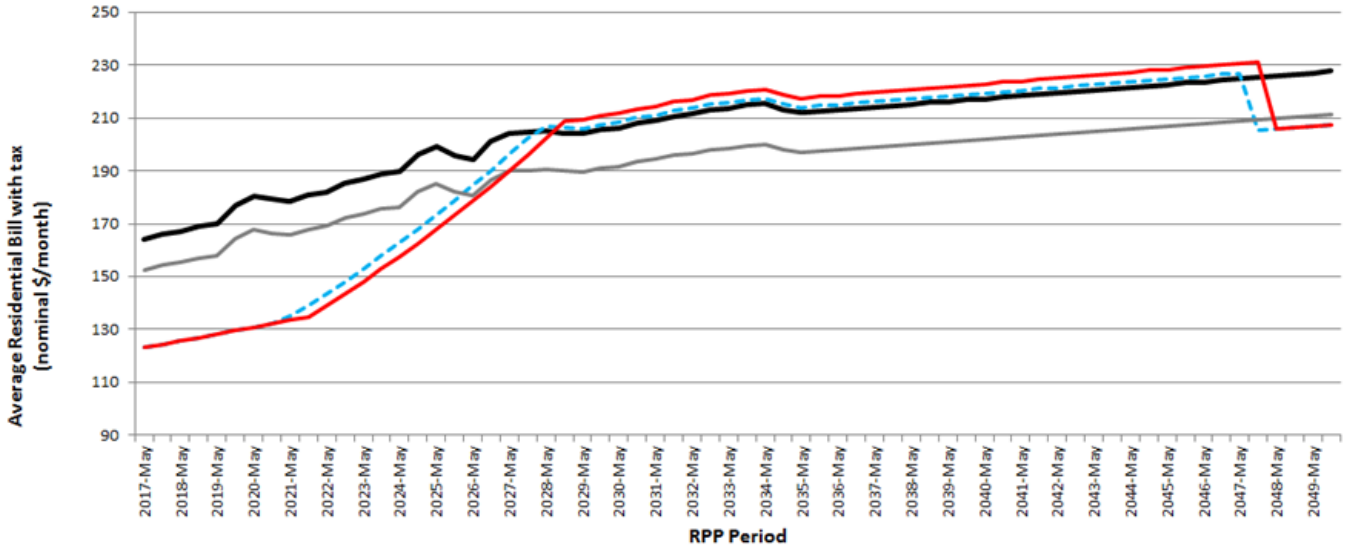
What are the possible consequences if section 28 approval is not given?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

If the indemnities are not provided, this could impact OPG and IESO directors' willingness to undertake activities that would fall outside of the scope of typical business activities and mandate, due to the risk of liability, and consequently jeopardizing the successful implementation of the planned approach to GA refinancing component of the ONFHP.

James Strang
General Government, Planning and Resources / PEMD
May 19, 2017

Appendix A: GA Smooting for RPP – Eligible Only (From May 9 TB/MBC Briefing Note & LRC package May 10, 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

From: Whitfield, Tobias P. (MOF)
To: John Kim; Ronald Kwan
Cc: Malle Hanslep (MOF)
Subject: OPG/IESO Indemnities
Date: Tuesday, May 23, 2017 4:14:24 PM

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
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:	Multani, Harkamal (ENERGY)
To:	Tobias P. Whitfield (MOF)
Cc:	Ronald Kwan; John Kim; Malle Hanslep (MOF); Montgomery, Kaitlin (MOF)
Subject:	OPG/IESO indemnity
Date:	Tuesday, June 06, 2017 6:16:12 PM
Attachments:	20170601-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity-DRAFT.xlsx 20170601-IESO Indemnity Agreement Confidential track changes -v4.docx 20170601-OPG Indemnity draft 3.docx 20170601-s.28 business case - IESO and OPG Indemnity OFHP -DRAFT.docx

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation ("OPG"). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the OPG, its directors, officers or employees in carrying out its roles with respect to implementing the Ontario Fair Hydro Plan.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to OPG's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other	On June 1, 2017 the Ontario Fair Hydro Plan Act, 2017 received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers and employees against any claims	Providing this indemnity will facilitate IESO in carrying out its role in implementing the ONFHP.	Claim, loss or costs incurred by the IESO, its directors, officers or employees in carrying out its roles with respect to implementing the ONFHP.	No	Low	No specified end date.	Financial Exposure will be linked to the OPG special purposes entity's debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to IESO's respective role in implementing the ONFHP under the Ontario Fair Hydro Plan Act, 2017, its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the ONFHP.

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation ~~is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the "Act").~~and/or one or more its agents, directors, officers or employees, may, or in certain circumstances is or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan").

AND WHEREAS -the Corporation, and its directors, officers ~~and~~ or employees, may~~, as a result of the Corporation's role in the implementation of the Act,~~ face ~~risk~~risks~~s~~ of liability ~~which extends~~extend ~~beyond the typical operations risk of the Corporation~~due to or as a result of the Fair Hydro Plan ~~and which may arise solely due to the Corporation's role in the implementation of the Act~~.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and each of its directors, officers, ~~and employees~~employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, ~~claims,~~ demands, ~~and~~ liabilities, taxes, fines, penalties, statutory payments, judgments

Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Commented [A1]: NTD: In process of confirming whether this applies to IESO. This may be taken out or further revised depending on further input from them.
Formatted: Highlight
Formatted: Font color: Auto, Highlight
Formatted: Highlight
Formatted: Highlight

and/or settlement amounts directly or indirectly suffered, sustained or incurred by ~~the~~a Protected ~~Persons~~Person~~—~~, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively "Losses"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising directly or indirectly, as a result of the Corporation's and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan. ~~arising specifically as a result of, or in connection with, the Protected Persons' direct~~IESO's role in carrying out activities related to the implementation of the Act (collectively, "Claims" and individually, a "Claim").

~~, [IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons' "direct" role. We request that the indemnity be broad enough to include actions that arise due to the IESO's role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was "specifically" as a result of, or related to a "direct" role.]~~

~~1. This indemnity does not apply with respect to Claims:~~

2. A Protected Person shall not be entitled to be indemnified in respect of ~~of a Claim~~such Protected Person's Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that ~~a payment has been made thereunder to such~~such Protected Person is actually paid under such insurance policy or claims fund~~ is actually so indemnified or covered under such policy~~; or~~ fund; or~~

(b) for which other indemnities are already provided to a Protected Person to the extent that ~~the payment has been made to such~~the~~a~~ Protected Person is actually so indemnified for those Losses by such indemnities~~ is actually so indemnified by under such indemnities~~; or

(c) ~~brought about or contributed to by a~~that are~~is~~ the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if ~~a judgment or other final adjudication adverse to the Protected Person establishes that there was~~such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person~~.~~; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation

Formatted: Font: 11 pt

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Times New Roman, Highlight

shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation or a financing entity, as applicable with reasonable grounds for believing any prospectus, registration statements, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentations shall constitute "gross negligence" or "willful misconduct" for purposes of this section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. Each Protected Person shall:

~~(a)~~ upon becoming aware of a Claim for which ~~was material to the cause of action as adjudicated; or~~

~~4. In order to be entitled to~~ such Protected Person may seek indemnification hereunder ~~in respect of any notice of a Claim that the Protected Person receives, the Protected Person must:~~

~~(f)~~(a) ~~immediately and without delay~~, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s)~~(c);~~;

~~(g)~~(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s)~~(c)~~ that is in the possession or under the control of the Protected

Commented [A2]: Updated wording from OPG with LSB minor edits for clarification.

Formatted: Font: Times New Roman, Highlight

Formatted: Font: Times New Roman, Highlight

Formatted: Font color: Auto

Formatted: Font color: Auto

DRAFT

Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

~~(b)~~(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

~~(i)~~(d) promptly take all ~~necessary~~ reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure ~~to give prompt notice as provided in this section 3 shall not affect the rights or obligations~~on the part of a Protected Person to take any ~~party to this indemnity, and only~~of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, ~~the party which was entitled to receive such notice~~~~Ontario~~ the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be reasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), ~~the~~~~each~~the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and ~~the~~each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing ~~the~~~~such~~the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a ~~the~~ Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be ~~costs~~ Losses to which this indemnity extends.

~~3.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

~~4.~~6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5"

Formatted: Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

   (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

   (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

   (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province

Formatted: Font: CG Times, Highlight

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Font: CG Times, Highlight

Formatted: Font: CG Times, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Times New Roman, Highlight

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

Formatted: Highlight

under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

Formatted: List Paragraph, Left, Line spacing: single, No bullets or numbering

~~5.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~6.~~12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

~~SIGNED, SEALED AND DELIVERED~~) **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

~~in the presence of~~)

)

) By: _____

~~Name:~~)

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

By: _____

Glenn Thibeault
Minister of Energy

DRAFT

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

DRAFT

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**").

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. A Protected Person shall not be entitled to be indemnified in respect of Losses~~This indemnity does not apply with respect to Losses~~, or a portion thereof ~~of a Protected Person~~:

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected person is actually paid under such insurance policy or claims fund~~but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses~~; or

   (b) for which other indemnities are already provided to a Protected Person ~~but only~~ to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

   ~~(c) is the~~that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person;~~if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity;~~ for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; ~~for greater certainty, and notwithstanding Section 2(d),~~

   ~~(d)~~(c) ~~the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable~~

Commented [A1]: Updated wording from OPG with LSB minor edits for clarification.

~~securities laws contained no misrepresentation shall constitute "gross negligence" or "wilfulwillful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder;~~ or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

~~(e) to the extent arising from any circumstances in which a Protected Person did not reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.~~

3. ~~In order to be entitled to indemnification hereunder in respect of any Losses, the~~Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable~~,~~ deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the~~any~~ Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps ~~, at the expense of the Province,~~ necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

~~A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.~~

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any~~all~~ Losses in respect of a Claim will be ~~fully~~ indemnified

Formatted: Font: Not Bold

Commented [A2]: Changes made to align with IESO indemnity

under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or~~,~~ delayed~~, or conditioned~~. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~4.~~5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has ~~fully~~ indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, ~~all~~ Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

Commented [A3]: Re-inserted as discussed.

~~5.~~7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with ~~any~~ a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ~~thirty~~ ninety (~~2~~30) days ~~of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested~~of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

~~6.~~8. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the

request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty or willful misconduct of that Protected Person who is an individual in the implementation of the Fair Hydro Plan.~~The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).~~

~~7.~~9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with ~~any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation)~~this indemnity agreement:

(a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

(b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement~~ and the performance of its obligations hereunder~~, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) ~~(including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act~~ required for it to enter into this indemnity agreement~~ and perform its obligations hereunder~~;

(c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to~~), and subject to: bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally~~; ~~to~~ the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;~~, to~~ section 11.3 of the *Financial Administration Act* (Ontario); and ~~to~~ section 43 of the *Financial Administration Act* (Ontario).

~~8.~~10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.

Formatted: Highlight

Commented [A4]: New wording of OPG

Commented [A5]: I've made some changes to this section per internal discussions.

~~9.~~11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

~~10.~~12. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

NOW THEREFORE, the parties have executed this indemnity as of the_____ day ~~and year~~of June, 2017~~ first above written~~.

ONTARIO POWER GENERATION INC.

By: _____

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

By:_____

Glenn Thibeault
Minister of Energy

DRAFT

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure would be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132, received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "Act). The Act enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both the OPG and the IESO have each requested an indemnity covering their respective corporations, subsidiaries (in the case of OPG), and respective directors, officers and employees in relation to their respective roles in carrying out the implementation of the ONFHP.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to the OPG and IESO, respectively.

Timing:

Approval is sought by June 13, 2017. The Indemnities are required in conjunction with the coming into force of the Act.

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed.

3. BACKGROUND

OPG – Role in Implementation of Ontario's Fair Hydro Plan (ONFHP)

OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it

was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity) is expected to finance. Risks associated with carrying out this role would fall outside of the scope of OPG's usual business/operations risks and would arise solely due to the OPG's role in implementation of the ONFHP. Examples of these risks include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

As a result, pre-existing indemnities and protections do not adequately protect OPG, its subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity to OPG would help facilitate OPG undertaking its role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP*

The Proposed Legislation, if passed would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the US market. IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Minister in order to facilitate the implementation of the ONFHP.

Draft

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities to the IESO, OPG, OPG's subsidiaries, and each of their respective directors, officers and employees is required in order to facilitate the carrying out of implementation of the ONFHP. Both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate which existing indemnities would address. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts". In addition the statutory protections do not indemnify for costs relating to defending a claim. This is further described in section (ii) below. Examples of specific risks to OPG include, without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include without limitation,

- liability for its role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could impact OPG and the IESO's willingness to undertake such activities jeopardizing the successful implementation of the ONFHP.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing OPG and the IESO with the requested Indemnities will provide them with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

To the extent that a claim would be paid under any other indemnity provided to OPG or IESO by the Province, or provided by OPG and IESO to any of its subsidiaries (in the case of OPG),

agents (in the case of the IESO), directors, officers and employees, these Indemnities would not apply. Language to address any possible duplication is included in the attached Indemnities.

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. The IESO does not have any other indemnity from the Province.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(2) of the Proposed Legislation, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under [the Proposed Legislation], the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the Act prohibit/would prohibit an action or other civil proceeding from being commenced against the enumerated protected persons under the respective provisions for any act done in good faith in the exercise or performance of their duties. Nothing precludes a person from bringing an action or other civil

proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors or officers, or each of its subsidiaries, their directors, officers, or employees so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the protected persons as a result of carrying out their roles in implementing the ONFHP (despite the statutory immunities provided), they are protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(b) Description of the risk and any risk mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The risk to the Province of giving the Indemnities is undeterminable at this time, but any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but as mentioned, does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the Proposed Legislation may mitigate against a liability arising against its employees, but as mentioned, does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to IESO and OPG's respective roles in relation to implementing the

ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided and to the extent already paid under such insurance, or other indemnification is provided, to the extent the individual is so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the OPG and IESO Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a

Draft

Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variance in the Indemnities includes a waiver provision (section 8 of the Indemnities) whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the OPG/IESO's or such Protected Person's activities in the implementation, or otherwise relating to the Fair Hydro Plan (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation). However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c)) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors and officers do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 9), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG and IESO directors' willingness to fully undertake their roles in implementing the ONFHP thereby jeopardizing the

successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

Draft

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

Draft

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

Draft

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

Draft

From:	Ronald Kwan
To:	Nancy Kennedy (MOHLTC)
Subject:	Presentation FYI
Date:	Friday, June 23, 2017 5:23:36 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v23).pdf

Hi Nancy,

Just an FYI.

We presented the attached to the OFA Audit and Risk Management Committee last week.

Ron

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

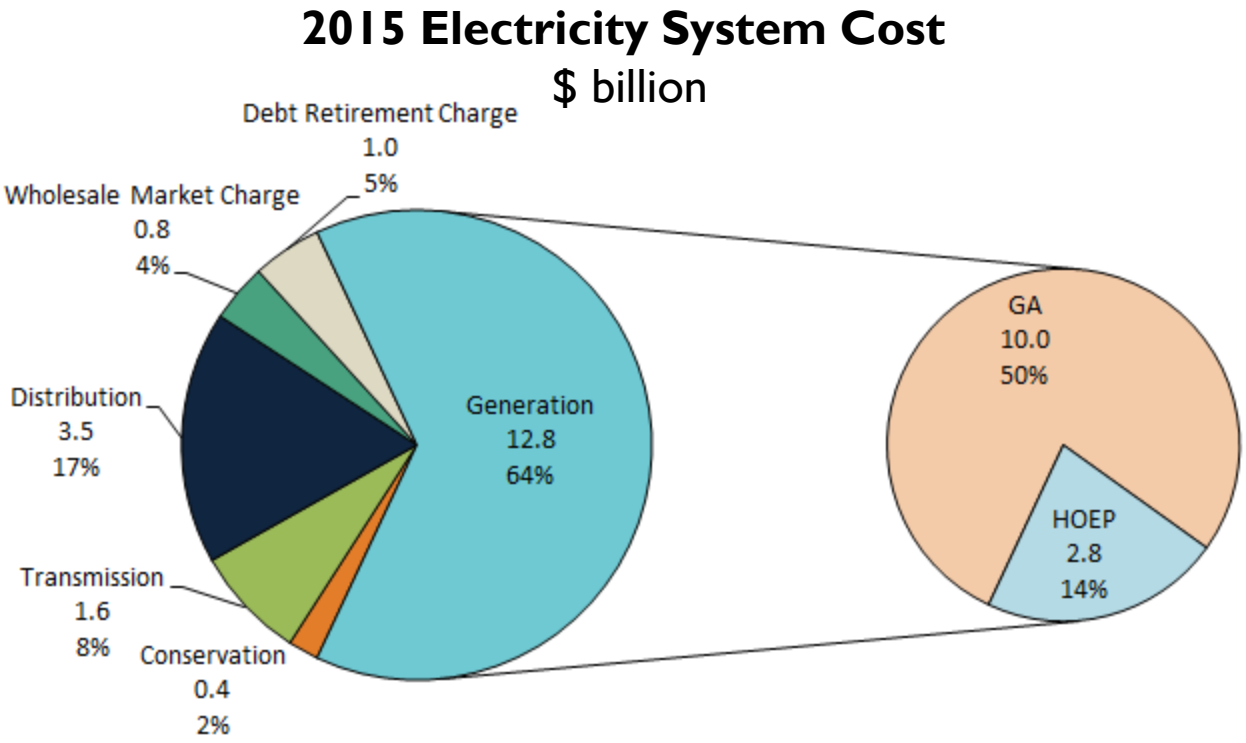
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

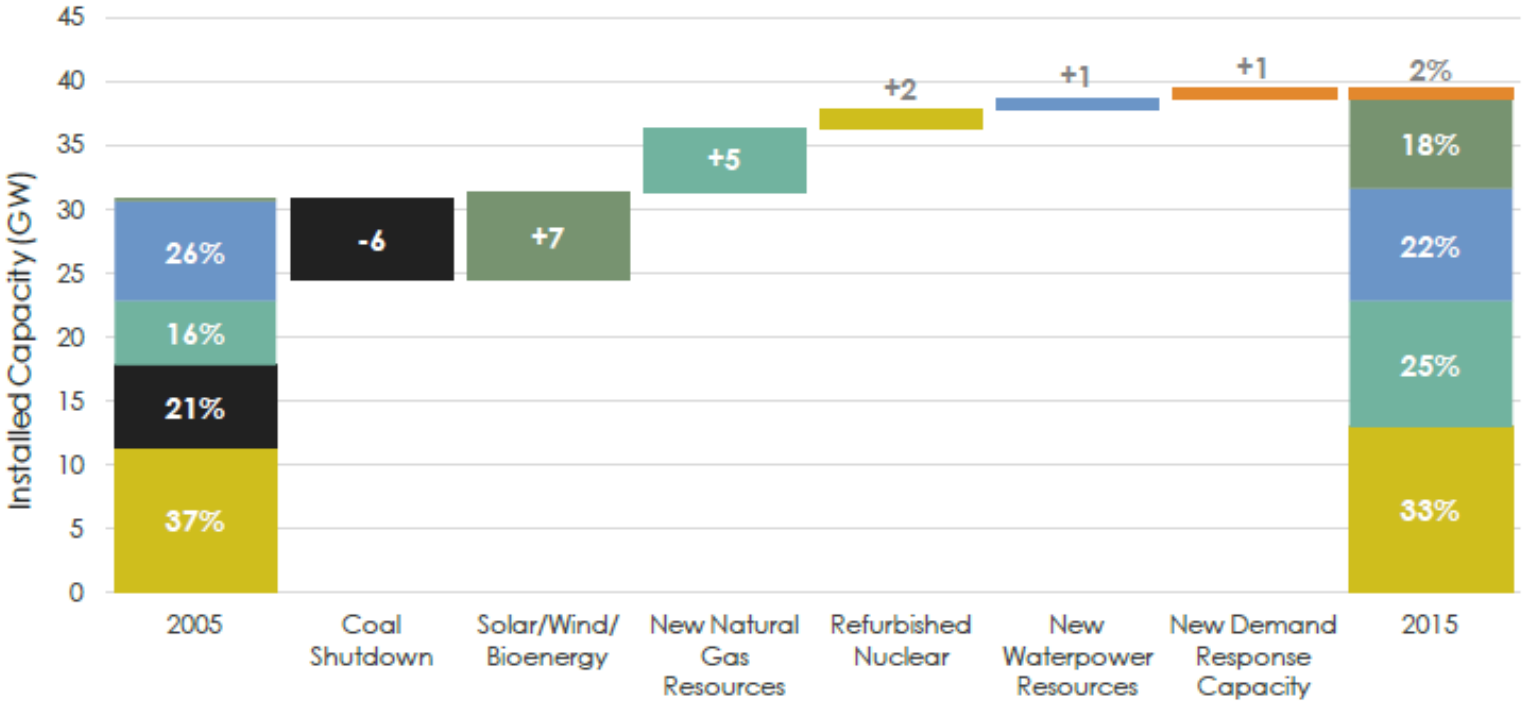
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

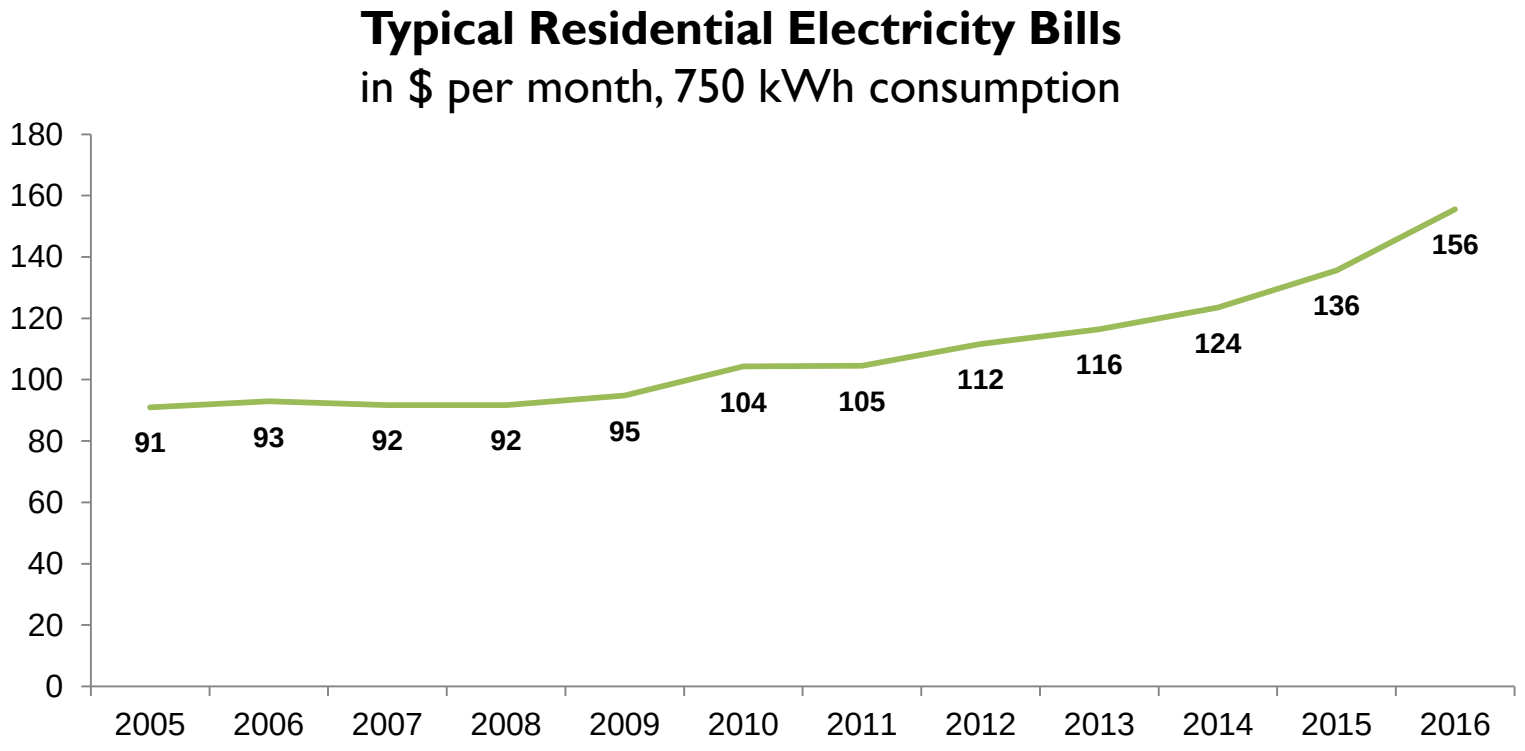
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

Overview:
The Ontario Fair Hydro Plan (cont'd)

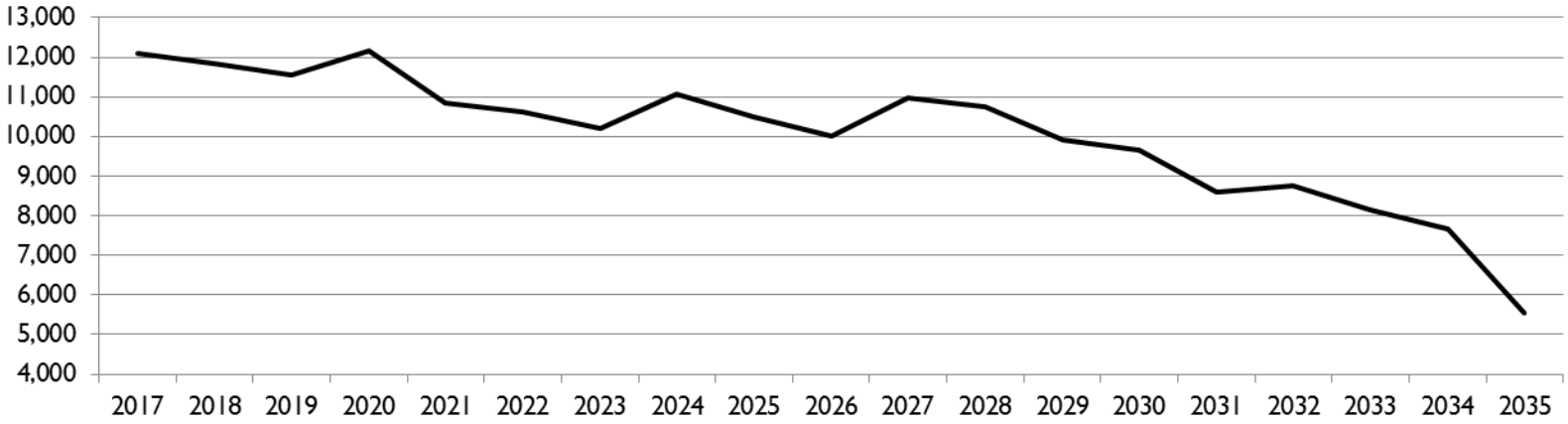
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The illustrative chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



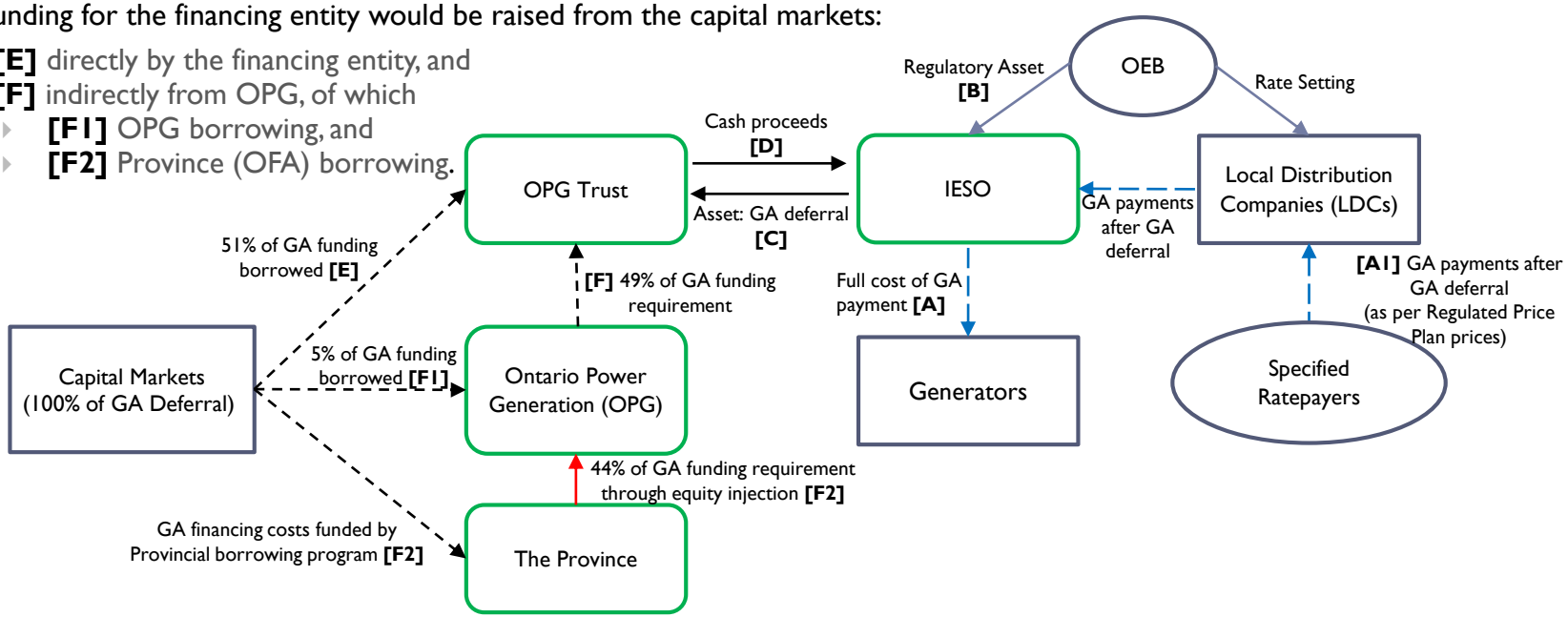
Source: IESO

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

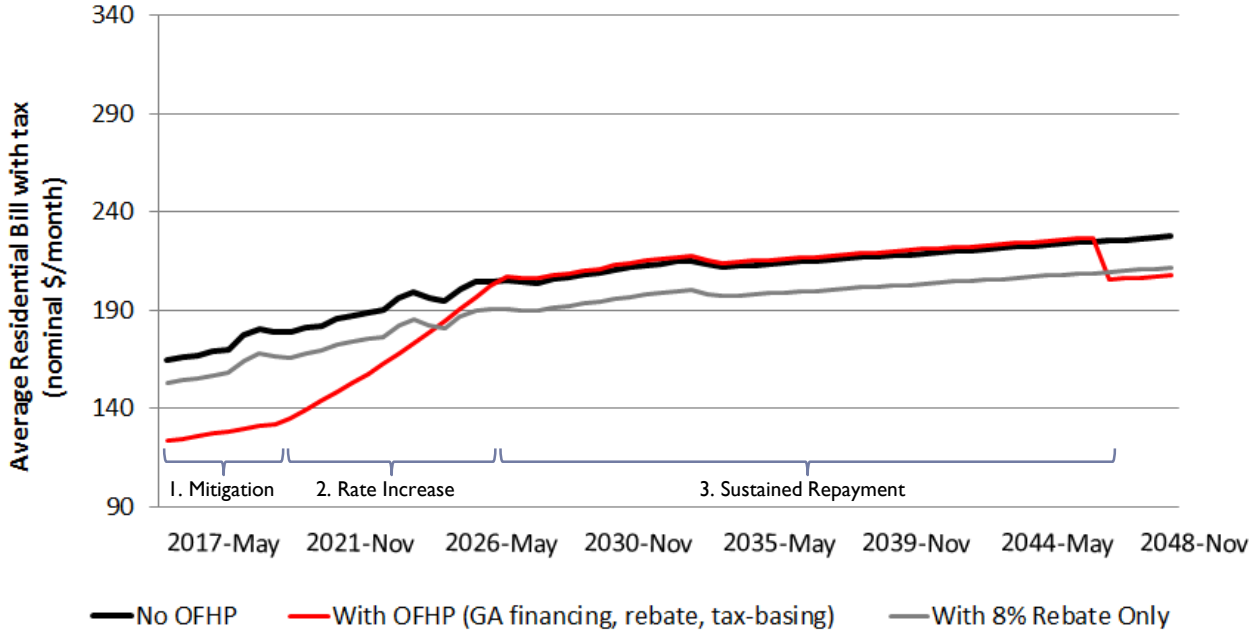
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments).
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see illustrative chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

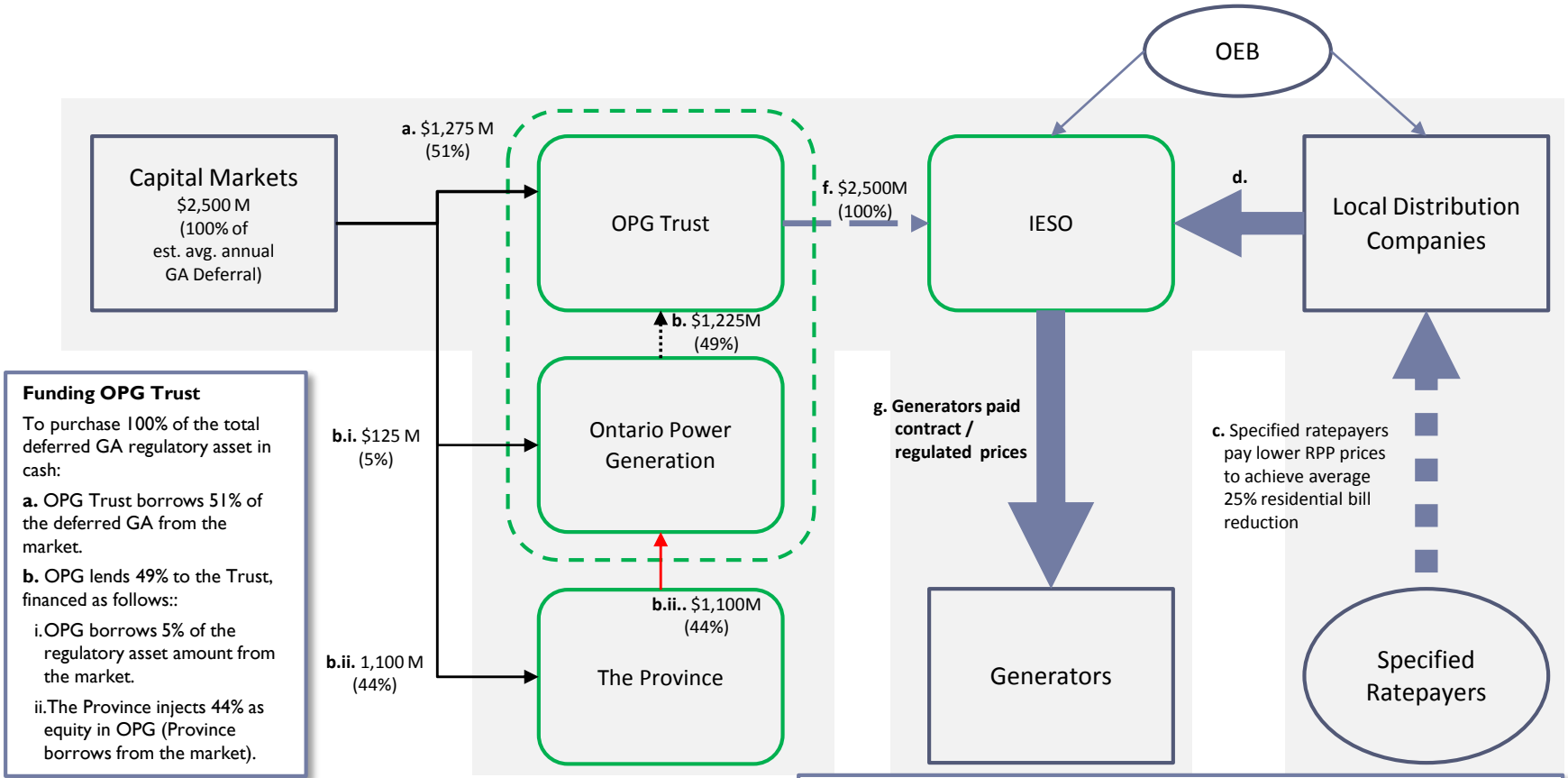
Phase 2: Rate Increase

- Residential bills continue lower than without the OFHP; however, not by 25% on average.
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases for the above purpose projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference between with OFHP (red) and 8% rebate (grey) only represents recovery of deferred GA and financing.

GA Financing Structure: Illustrative Fund Flows* - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

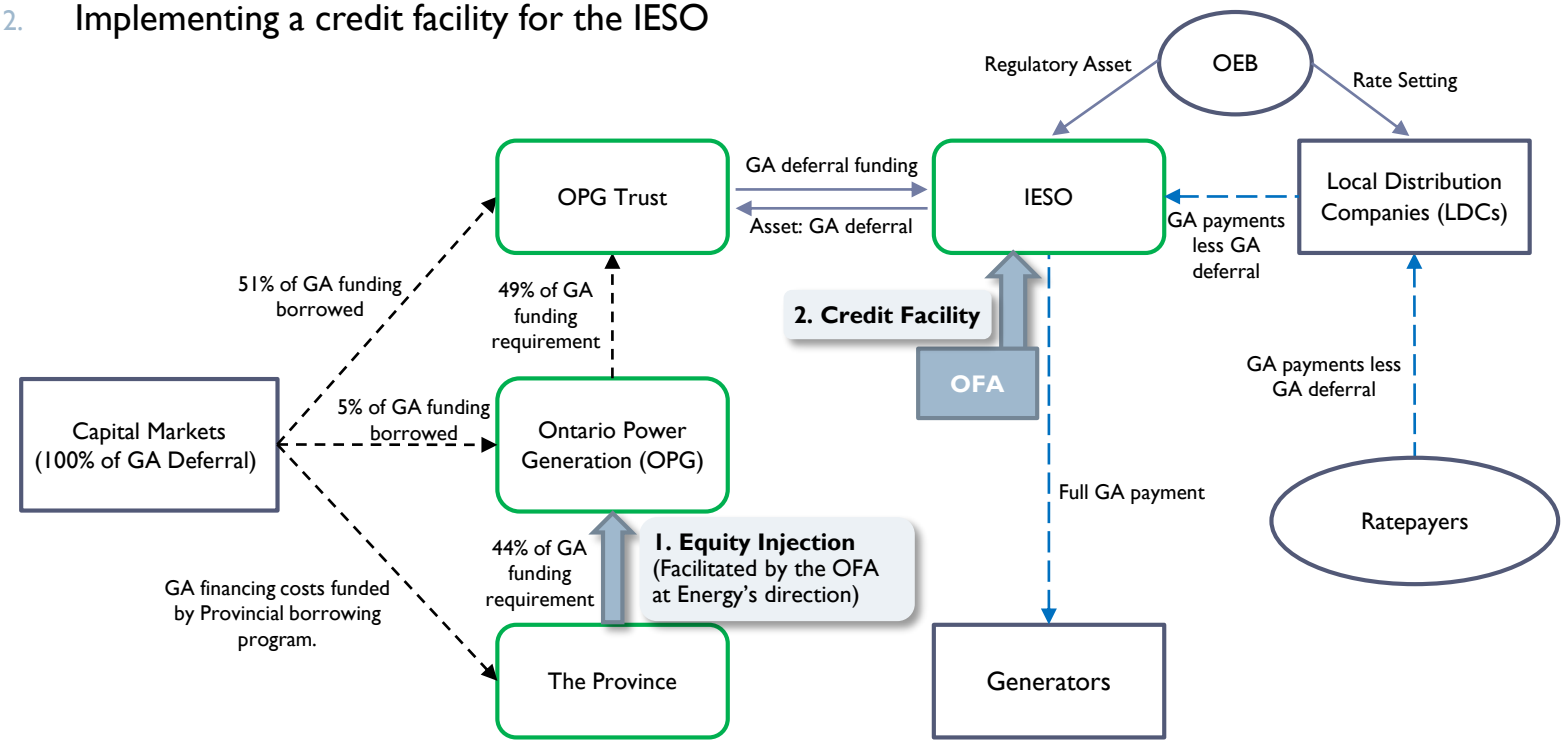
f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

* Amounts are illustrative and based on an assumed deferred cost, or regulatory of $2.5 billion.

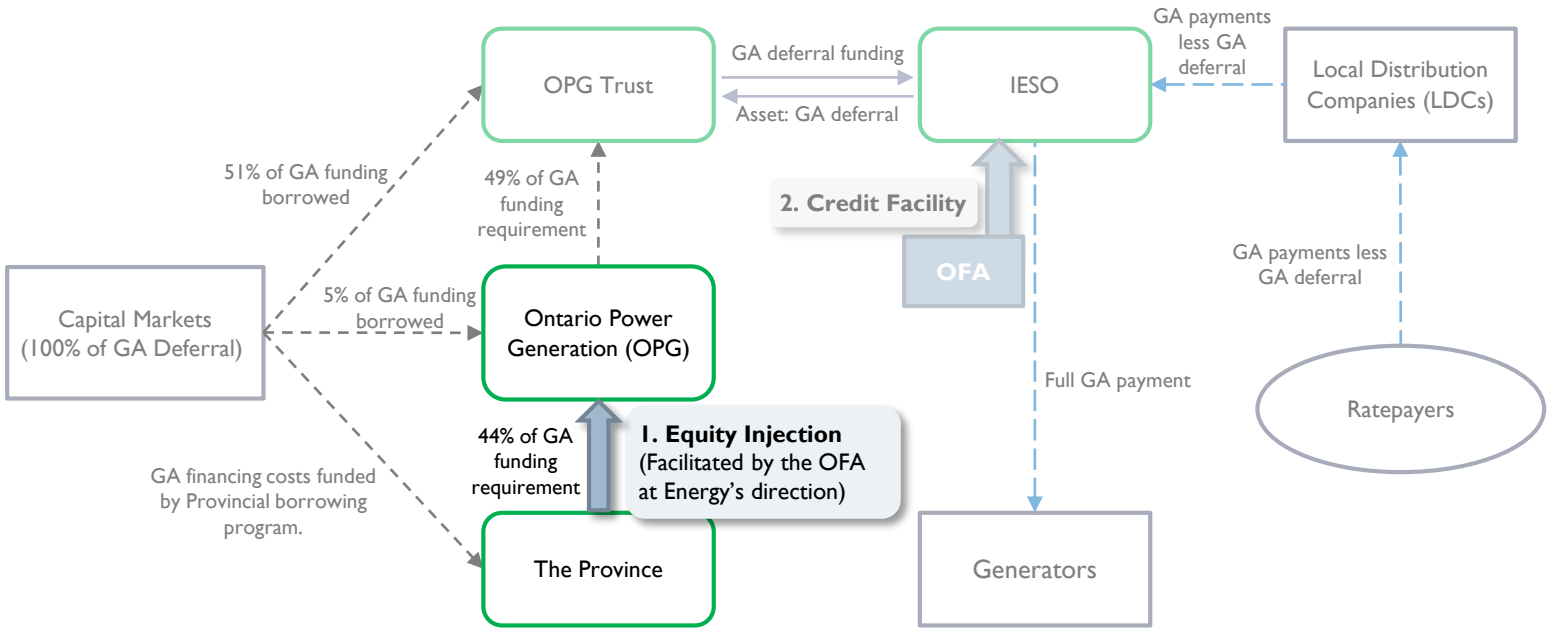
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO



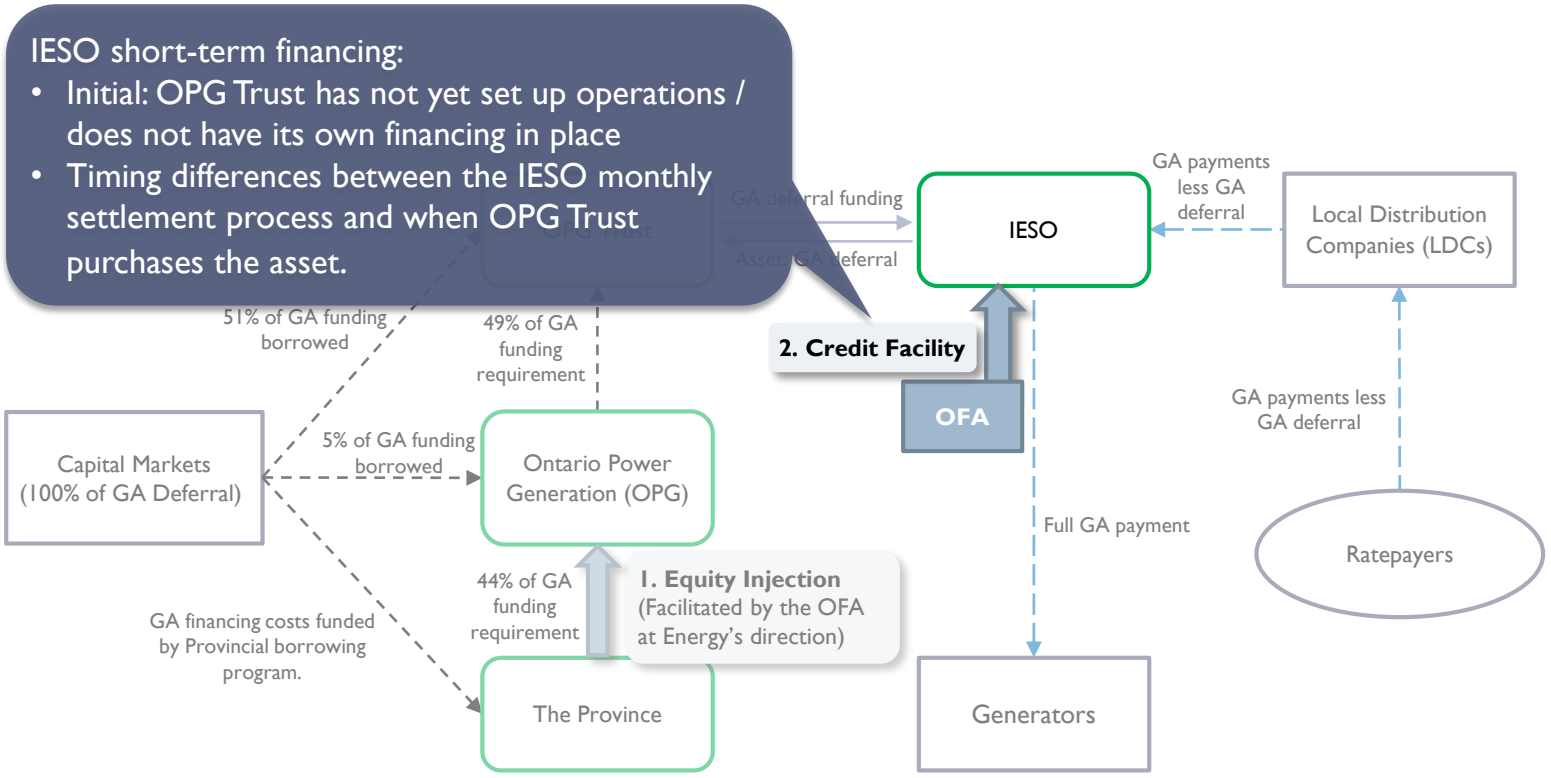
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1 bn related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which
  - on consolidation into Public Accounts, would be offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

GA Financing: Illustrative Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From:	John Kim
To:	Ronald Kwan
Subject:	RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date:	Friday, August 18, 2017 3:12:49 PM
Attachments:	DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinaClean.docx 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean2.docx

Sure, here it is.

Would you be around to sign shortly?

From: Ronald Kwan
Sent: Friday, August 18, 2017 2:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Thanks John. I noticed that Lisa also copied over the extra zero later on too in "20015". Would you correct in the BN and Directive.

Ron

From: John Kim
Sent: August 18, 2017 2:02 PM
To: Ronald Kwan
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Works for me. Just change tracked one thing in the attached.

John

From: Ronald Kwan
Sent: Friday, August 18, 2017 1:48 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Effective January 1, 2015, the Ontario Power Authority (the "OPA") and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to directives dated December 22nd, 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28th, 2016, the Minister approved and directed the OFA to make loans (the "Advances") to the OPA and the IESO after the Amalgamation from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA and IESO after the Amalgamation to meets its purposes.

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility of up to $2 billion to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

Minister of Finance

Per _____

The Honourable Liz Sandals

President of Treasury Board

Alternate for the Minister of Finance

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE")
REQUIRED UNDER THE OFA'S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility).

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

<u>The IESO</u>

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act*, *1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

From:	John Kim
To:	Ronald Kwan
Subject:	RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date:	Friday, August 18, 2017 2:02:51 PM
Attachments:	01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean.docx

Works for me. Just change tracked one thing in the attached.

John

From: Ronald Kwan
Sent: Friday, August 18, 2017 1:48 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE")
REQUIRED UNDER THE OFA'S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility).

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

<u>The IESO</u>

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, ~~and~~ December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

From: Ronald Kwan
To: John Kim
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date: Friday, August 18, 2017 1:48:24 PM
Attachments: 01 - IESO-OFA - FHP LoC - Intercept Directive v10_Markup.docx

---

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR ANTO EXEMPTION FROM THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE") REQUIRED UNDER THE OFA'S LENDING POLICY

~~BACKGROUND~~CONTEXT

~~Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, and December 18th, 2013, the Minister of Finance ("Minister") approved and directed the Ontario Financing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.~~

~~Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").~~

~~Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.~~

~~The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").~~

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

Formatted: Line spacing: Multiple 1.15 li

Formatted: Top: 0.75", Bottom: 0.56"

Commented [LS1]: Program area please confirm accuracy of directives.

Commented [LS2]: After discussion with Ken Russell, we think the directive should be limited to the new credit facility agreement.

Commented [SK83]: I understand we are deciding to ensure both credit facilities are covered the Intercept Exemption Directive. Will revert language back accordingly.

Commented [JK4]: A business decision – which I am sure ADM/CEO would support

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION
~~**CONSIDERATIONS**~~

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility ~~(~~~~{~~to be amended from the current $975 million facility~~)~~~~}~~.

~~- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:~~

  ~~Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.~~

~~- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:~~

  ~~The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public~~

Formatted: Space Before: 0 pt

~~body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.~~

~~**RATIONALE FOR EXEMPTION**~~

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or~~of the~~ intent of the OFA's Lending Policy.

~~**MINISTER'S DIRECTIVE**~~

- ~~The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.~~

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

The IESO

- 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.

- The IESO is a public body for the purposes of CIPA.

Commented [LS5]: Is this even a possibility? I thought there were no funds to intercept.

Commented [SK86]: There are payments (appropriated to Energy from the legislature) made to the IESO to carry out price mitigation programs (eg. electricity support programs).

Just want to explain here the intent of the policy isn't to claw back/intercept payments specifically designed to assist electricity ratepayers for which the IESO is a conduit.

Commented [RK7R6]: Not "made to" – Maybe "flowing through"

Commented [JK8]: To Lisa's question - I don't believe that is the intent of requiring an intercept provision.

Commented [RK9]: Fair to say, if the intercept provision is specifically for amounts appropriated for the public body with an OFA loan?

Formatted: Space Before: 0 pt

Formatted: Space Before: 0 pt

Formatted: Space Before: 0 pt, Don't keep with next

Formatted: No bullets or numbering

Formatted: No bullets or numbering

Formatted: English (Canada)

Formatted: No bullets or numbering

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, and December 18th, 2013, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 20015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Formatted: Underline

Commented [LS10]: Program area please confirm accuracy of directives.

Formatted: List Paragraph, Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 2.13" + Indent at: 2.38"

Formatted: Indent: Left: 0.25"

Formatted: List Paragraph, Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 2.13" + Indent at: 2.38"

Formatted: Indent: Left: 0.25"

Formatted: List Paragraph, Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 2.13" + Indent at: 2.38"

Formatted: Indent: Left: 0.25"

Formatted: List Paragraph, Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 2.13" + Indent at: 2.38"

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

From:	Ronald Kwan
To:	John Kim
Subject:	RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date:	Thursday, August 17, 2017 3:31:58 PM

I'm free.

Ron

From: John Kim
Sent: August-17-17 15:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi Ron,

Could you let me know when you're free?

Thanks,

John

From: Ronald Kwan
Sent: Thursday, August 17, 2017 2:24 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Thanks John.

Ron

From: John Kim
Sent: August-17-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Fyi and Malle's comments.

We followed up on why they left out the $475M

From: Lisa Stein
Sent: Thursday, August 17, 2017 1:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell

<Kenneth.Russell@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
To: Ronald Kwan
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date: Thursday, August 17, 2017 3:06:33 PM

Hi Ron,

Could you let me know when you're free?

Thanks,

John

From: Ronald Kwan
Sent: Thursday, August 17, 2017 2:24 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Thanks John.

Ron

From: John Kim
Sent: August-17-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Fyi and Malle's comments.

We followed up on why they left out the $475M

From: Lisa Stein
Sent: Thursday, August 17, 2017 1:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: John Kim
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx
Date: Thursday, August 17, 2017 2:23:44 PM

Thanks John.

Ron

From: John Kim
Sent: August-17-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Fyi and Malle's comments.

We followed up on why they left out the $475M

From: Lisa Stein
Sent: Thursday, August 17, 2017 1:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v5_Markup2Clean OFA Legal.docx

Hi John,

Please see my attached preliminary edits and comments. I've also included Sarah Harris on this e-mail to keep her in the loop.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: John Kim
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx
Date: Tuesday, September 19, 2017 5:51:43 PM
Attachments: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean_Markup.docx

---

Hi John,

How about a much shorter BN?

Ron

From: John Kim
Sent: September-19-17 16:30
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx

Hi Ron,

Pls. see attached draft, based on the earlier note.

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package\Intercept Inclusion Option

Thanks,

John

BACKGROUND NOTE

OFA -- IESO CREDIT FACILITY &
THE INTERCEPT PROVISION REQUIRED UNDER THE OFA'S LENDING POLICY

~~**CONTEXT**~~

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). ~~In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.~~

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet].

In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the 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 to the OFA under a loan agreement ~~from money appropriated by the Legislature for payment to the public body~~.

Per the requirements of the OFA's Lending Policy, the OFA ~~plans to~~has reached out to the Ministry of Energy and ~~the~~ IESO to fulfill the requirement to include an intercept provision in ~~the OFHP C~~credit ~~F~~facility agreements with the IESO~~, as well as the Original Credit Facility agreement, both of which may be amended from time to time~~.

- The OFA Lending Policy, as approved by the OFA Board, provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following ~~requirements in relation to the~~ intercept provision requirement:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

~~**PREVIOUS RECOMMENDATION**~~

- ~~In August 2017, OFA staff had recommended the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.~~

Formatted: Font: +Body (Calibri), 11 pt
Formatted: Line spacing: single
Formatted: Top: 0.69"
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt

- The requested Intercept Exemption Directive would have applied to the two specified IESO credit facilities.

CURRENT DIRECTION

- Following consultations with the senior executives at the Ministry of Finance and given the implementation efforts of the Fair Hydro Plen (FHP), the current proposal is to proceed with inserting the intercept provision into the OFHP Credit Facility agreement and the amendment to the existing Original Credit Facility agreement to comply wih the OFA Lending Policy.

- The main consideration is to avoid the appearance of putting in place a work around of the OFA Lending Policy for the FHP.

CURRENT STATUS

- A decision was made to not proceed with requesting the Intercept Exemption Directive by the Ministry of Finance and to pursue the due steps required under the OFA Lending Policy to put in place the intercept provision in the credit facility agreements.

- The new FHP credit facility, with the required intercept clause, will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility) which will also require the intercept clause to be added.

  - When the original credit facility was put in place effective January 1, 2005 in favour of the Ontario Power Authority, through a Minister's directive received in December 2004, no intercept provision was incorporated nor was an exemption received in the directive. The original agreement has been amended and extended since that time, effectively grandfathering the original agreement [without the intercept provision].
  - The original decision to exclude the intercept provision may have been a legal interpretation from Legal staff at the time or possibly an oversight. OFA staff, following advice from current Legal staff are working to bring the original facility and the new OFHP credit facility onside with the strict interpretation of the OFA Lending Policy.

- Including an intercept provision in the credit facility agreements with the IESO is expected~~would~~ to have no practical ~~usefulness or~~ impact as the IESO receives no appropriations~~operational funding~~ from the Province of Ontario [Energy to confirm], but would bring the lending facilities onside with the requirements of the OFA Lending Policy and be consistent with CIPA.

- The IESO settlements system for the electricity sector facilitates the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., This funding from the Ministry of energy is for the benefit of various electricity consumers and is not part of IESO operational expense which is funded through IESO fees.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution

Formatted: Indent: Left: 0.25"

Commented [JK1]: Maybe delete this section

Formatted: Indent: Left: 0.25"

Formatted: Indent: Left: 0.25"

companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

There is no expected fiscal impact related to including an intercept clause.

BACKGROUND

The IESO

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division /
Ontario Financing Authority
September 19, 2017

Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt
Formatted: Font: +Body (Calibri), 11 pt

From:	Ronald Kwan
To:	Gavin He
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date:	Friday, June 02, 2017 2:53:47 PM
Attachments:	2 - CIPA - OIC s22 - OFA_FHP - LRC_CEO to DM (MOF Legal)_CEFD_v2_Clean_Markup.docx 1 - CIPA - OIC s22 - OFA_FHP - LRC Approval Form (MOF Legal Comments)_CEFD_v2_Clean_Markup.docx

Hi,

A few suggestions.

Ron

From: Gavin He
Sent: June-02-17 14:20
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

EFB is good with your edits. In addition, we made corresponding changes in the memos as well. Please find attached the final package for your signature. I will bring you a hard copy of the package as well.

Regards,
Gavin He

From: Ronald Kwan
Sent: Friday, June 02, 2017 12:38 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

Some suggestions.

Ron

From: Gavin He
Sent: June-01-17 21:36

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

Please find attached the latest version of the package with edits from Legal. I have copied your edits from this morning to the attached version as well.

The package is also saved under below folder:
S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package\Final IESO OIC material

Thanks,
Gavin He

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's review and consideration is a submission for an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

IESO has requested that the OFA provide a revolving credit facility of ~~up to~~ $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.

../2

There is expected to be initial and ~~potential~~ 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.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered at LRC on June 27, 2017 together with proposed Ministry of Energy submission for regulations related to the *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Attachment

c. Ronald Kwan~~, ADM, Corporate and Electricity Finance Division~~
John Kim~~, Director, Electricity Finance Branch, Ontario Financing Authority~~

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the authority of the Minister of Finance to lend to the OFA which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017* as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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, therefore, 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 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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.

- 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.

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

- It is proposed that the OIC authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 billion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date:	Friday, June 02, 2017 2:20:04 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC Approval Form (MOF Legal Comments)_CEFD_v2.docx 2 - CIPA - OIC s22 - OFA_FHP - LRC_CEO to DM (MOF Legal)_CEFD_v2.docx 3 - CIPA - OIC s22 - OFA_FHP - LRC_DM to Minister (MOF Legal)_CEFD_v2.docx 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE (002).docx

Hi Ron,

EFB is good with your edits. In addition, we made corresponding changes in the memos as well. Please find attached the final package for your signature. I will bring you a hard copy of the package as well.

Regards,
Gavin He

From: Ronald Kwan
Sent: Friday, June 02, 2017 12:38 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

Some suggestions.

Ron

From: Gavin He
Sent: June-01-17 21:36
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

Please find attached the latest version of the package with edits from Legal. I have copied your edits from this morning to the attached version as well.

The package is also saved under below folder:
S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package\Final

IESO OIC material

Thanks,
Gavin He

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by ~~[~~December 31, 2047~~]~~.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA ~~under which~~, and in turn ~~-~~the OFA has provided loans and credit facilities to colleges, school boards and other public bodies ~~agencies~~ such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the ~~overall~~authority of the ~~-~~Minister of Finance ~~lending authority~~ to lend to the OFA ~~to allow~~ which will provide the OFA with the capacity to provide additional loans ~~under credit facilities requested by~~to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017*~~, under anticipated and potential timing differences~~ as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under ~~upon the enactment of~~ the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to

the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the ~~ on-going~~ *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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. ~~At certain times~~ During this period, Global Adjustment amounts ~~initially~~ collected from ratepayers will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The *Ontario Fair Hydro Plan Act, 2017* ~~allows~~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 ~~the~~at ~~assetdeferral~~deferred amounts.
    - 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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 ~~may~~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.

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

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

- It is proposed that the OIC ~~authorization be for~~authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide ~~additional~~ credit facilities to the IESO ~~in an amount not to exceed $2.05 billion~~.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 b~~m~~illion.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister ~~will be required that will~~may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's review and consideration is a submission for an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

IESO has requested that the OFA provide a revolving credit facility of up to $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. ~~At certain times~~During this period, Global Adjustment amounts ~~initially~~ collected from ratepayers will ~~, therefore,~~ be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The *Ontario Fair Hydro Plan Act, 2017* gives~~allows~~ 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 ~~finance that deferralthat asset~~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 potential 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 ~~may~~ 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 ~~potential~~ 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.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered at LRC on June 27, 2017 together with proposed Ministry of Energy submission for regulations related to the *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Attachment

c. Ronald Kwan, ADM, Corporate and Electricity Finance Division
John Kim, Director, Electricity Finance Branch, Ontario Financing Authority

Ministry of Finance
Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances
Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister of Finance

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for your approval and signature is a submission for an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's *Ontario Fair Hydro Plan Act, 2017.*

IESO has requested that the OFA provide a revolving credit facility of up to $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. ~~At certain times~~During this period, Global Adjustment amounts ~~initially~~ collected from ratepayers will~~, therefore,~~ be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The *Ontario Fair Hydro Plan Act, 2017* gives~~allows~~ 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 ~~finance that deferral that asset~~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 potential 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 ~~may~~ 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.

As a result, IESO requires short-term financing to be in place for initial and ~~potential~~ 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.

Staff of the Ontario Financing Authority are available to address any questions you may have regarding this matter.

Scott Thompson

Attachment

c. Gadi Mayman, CEO, Ontario Financing Authority
Ronald Kwan, ADM, Ontario Financing Authority

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

_____

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From:	Ronald Kwan
To:	Gavin He
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date:	Friday, June 02, 2017 12:37:46 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC Approval Form (MOF Legal Comments)_CEFD_Markup.docx

Hi,

Some suggestions.

Ron

From: Gavin He
Sent: June-01-17 21:36
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

Please find attached the latest version of the package with edits from Legal. I have copied your edits from this morning to the attached version as well.

The package is also saved under below folder:
S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package\Final IESO OIC material

Thanks,
Gavin He

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by ~~[~~December 31, 2047~~]~~.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA ~~under which~~, and in turn ~~-~~the OFA has provided loans and credit facilities to colleges, school boards and other public bodies ~~agencies~~ such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the ~~overall~~authority of the ~~-~~Minister of Finance ~~lending authority~~ to lend to the OFA ~~to allow~~ which will provide the OFA with the capacity to provide additional loans ~~under credit facilities requested by~~to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017*~~, under anticipated and potential timing differences~~ as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under ~~upon the enactment of~~ the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to

the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the ~~ on-going~~ *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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. ~~At certain times~~ During this period, Global Adjustment amounts ~~initially~~ collected from ratepayers will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The *Ontario Fair Hydro Plan Act, 2017* ~~allows~~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 ~~the~~at ~~asset~~deferral~~deferred amounts~~.
    - 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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 ~~may~~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.

Commented [RK1]: I don't think of such an action by IESO as financing the deferred amount. Perhaps "funded" is an appropriate word -- such that the deferred amount is reduced in its variance account. The financing entity does financing, and it would then have an investment asset

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

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

- It is proposed that the OIC ~~authorization be for~~authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide additional ~~-~~credit facilities to the IESO ~~in an amount not to exceed $2.05 billion~~.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 b~~m~~illion.

Commented [GH2]: Legal changed the amount to $2B, as I believe the $0.5B was already approved previously. So I am adding the word "additional" to clarify that $2B is the incremental amount.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister ~~will be required that will~~may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date:	Thursday, June 01, 2017 9:35:42 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC Approval Form (MOF Legal Comments)_CEFD.docx 2 - CIPA - OIC s22 - OFA_FHP - LRC_CEO to DM (MOF Legal)_CEFD.docx 3 - CIPA - OIC s22 - OFA_FHP - LRC_DM to Minister (MOF Legal)_CEFD.docx 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE (002).docx

Hi Ron,

Please find attached the latest version of the package with edits from Legal. I have copied your edits from this morning to the attached version as well.

The package is also saved under below folder:
S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package\Final IESO OIC material

Thanks,
Gavin He

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by ~~[~~December 31, 2047~~]~~.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA ~~under which~~, and in turn ~~-~~the OFA has provided loans and credit facilities to colleges, school boards and other public bodies ~~agencies~~ such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to increase the ~~overall~~authority of the ~~-~~Minister of Finance ~~lending authority~~ to lend to the OFA ~~to allow~~ which will provide the OFA with the capacity to provide loans ~~under credit facilities requested by~~to the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the *Fair Hydro Act, 2017*~~, under anticipated and potential timing differences~~ as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.
    - The timing of this OIC is critical to ensure that borrowing authority for the OFA is available to provide the IESO its requested financing arrangements under ~~upon the enactment of~~ the *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to

the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the ~~ on-going~~ *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- 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. At certain times Global Adjustment amounts ~~initially~~ collected from ratepayers will~~, therefore,~~ be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The *Ontario Fair Hydro Plan Act, 2017* ~~allows~~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 finance th~~eat assetdeferral~~deferred amounts.
    - 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 current Global Adjustment shortfall.

- There is expected to be initial and potential 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 ~~may~~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.

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

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

- It is proposed that the OIC ~~authorization be for~~authorizes the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide additional credit facilities to the IESO in an amount not to exceed $2.05 ~~b~~billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2.0 billion, for a total amount of $2.475 b~~m~~illion.

Commented [GH1]: Legal changed the amount to $2B, as I believe the $0.5B was already approved previously. So I am adding the word "additional" to clarify that $2B is the incremental amount.

s. 3 Direction and Urgency

- The Province passed legislation on May 31, 2017 to implement the *Ontario Fair Hydro Plan Act, 2017,* which will reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister ~~will be required that will~~may provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan. Upon approval, the Minister of Finance will have authorization to provide a loan to the OFA with a directive on how the loan can be used.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's *Ontario Fair Hydro Plan Act, 2017*. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's review and consideration is a submission for an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

IESO has requested that the OFA provide a revolving credit facility of up to $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. At certain times, Global Adjustment amounts ~~initially~~ collected from ratepayers will ~~, therefore,~~ be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The *Ontario Fair Hydro Plan Act, 2017* givesallows 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 finance theat deferred amountsalthat asset. 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 potential 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. Even once the SPV is set up to borrow, there may 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 potential 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.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered at LRC on June 27, 2017 together with proposed Ministry of Energy submission for regulations related to the *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Attachment

c. Ronald Kwan, ADM, Corporate and Electricity Finance Division
John Kim, Director, Electricity Finance Branch, Ontario Financing Authority

Ministry of Finance
Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances
Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister of Finance

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for your approval and signature is a submission for an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's *Ontario Fair Hydro Plan Act, 2017.*

IESO has requested that the OFA provide a revolving credit facility of up to $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. At certain times, Global Adjustment amounts ~~initially~~ collected from ratepayers will~~, therefore,~~ be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The *Ontario Fair Hydro Plan Act, 2017* gives~~allows~~ 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 finance the~~at~~ deferred amounts~~al that asset~~. 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 potential 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. Even once the SPV is set up to borrow, there may 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.

As a result, IESO requires short-term financing to be in place for initial and potential 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.

Staff of the Ontario Financing Authority are available to address any questions you may have regarding this matter.

Scott Thompson

Attachment

c. Gadi Mayman, CEO, Ontario Financing Authority
Ronald Kwan, ADM, Ontario Financing Authority

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two Billion Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two Billion Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by December 31, 2047;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

_____

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux milliards de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux milliards de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 31 décembre 2047;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He; John Kim
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Thursday, June 01, 2017 12:11:13 PM

Hi Ron

At this point we are just waiting for MOF Legal final review and sign off. We check with them around 5pm yesterday and they indicated that they will have this done asap.

I think we have made some of the revisions you suggest, but will check and make sure they have the latest.

Bruno

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

From: Ronald Kwan
To: John Kim; Bruno Amara
Cc: Gavin He
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Thursday, June 01, 2017 12:00:38 PM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v9_Markup.doc

---

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to the draft, and noted that the "proposed" language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the ~~enactment~~ implementation of the ~~proposed~~ *Ontario Fair Hydro Plan Act, 2017.*

Commented [RK1]: Need to revise the form to remove "proposed" and change "would" where appropriate.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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 ~~may~~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 ~~potential~~expected monthly timing differences, or in the event that the OPG

SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From: Ronald Kwan
To: Gavin He
Cc: Bruno Amara; John Kim
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Wednesday, May 31, 2017 1:55:35 PM

Thanks Gavin.

Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

From: Gavin He
To: Ronald Kwan
Cc: Bruno Amara; John Kim
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Wednesday, May 31, 2017 1:55:14 PM

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it's still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

From: Ronald Kwan
To: Bruno Amara; John Kim
Cc: Gavin He
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Wednesday, May 31, 2017 1:53:59 PM

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

From: Gavin He
To: John Kim
Cc: Ronald Kwan
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc
Date: Wednesday, June 07, 2017 3:15:34 PM

Hi John,

DMO has requested a joint briefing for the Deputy and the Minister, could you please let me know who should be invited to the briefing?

Thanks,
Gavin He

From: Ronald Kwan
Sent: Friday, June 02, 2017 2:54 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

A few suggestions.

Ron

From: Gavin He
Sent: June-02-17 14:20
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

EFB is good with your edits. In addition, we made corresponding changes in the memos as well. Please find attached the final package for your signature. I will bring you a hard copy of the package as well.

Regards,
Gavin He

From: Ronald Kwan
Sent: Friday, June 02, 2017 12:38 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

Some suggestions.

Ron

From: Gavin He
Sent: June-01-17 21:36
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

Please find attached the latest version of the package with edits from Legal. I have copied your edits from this morning to the attached version as well.

The package is also saved under below folder:
S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package\Final IESO OIC material

Thanks,
Gavin He

From: Ronald Kwan
Sent: Thursday, June 01, 2017 12:01 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi,

How's the signing package coming along?

Also, at Energy's weekly, OPG and IESO said that they are working towards the SPV being able to start purchasing the asset in August (though actual timing is TBC), so I have made some suggested to

the draft, and noted that the “proposed” language should be updated (if not done already).

Thanks,
Ron

From: Gavin He
Sent: May-31-17 13:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Hi Ron,

I have shared the latest draft from this morning with DMO, and noted to DMO that it’s still pending approvals from Legal and ADMs.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, May 31, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Thanks Bruno.

Gavin, where are we on getting material to the DMO and CO?

Thanks,
Ron

From: Bruno Amara
Sent: May-31-17 13:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm_Billpassed.doc

Ron/John

Will update the other pieces similarly

From: Ronald Kwan
To: "Veinot, Cindy (TBS)"
Subject: RE: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT
Date: Thursday, June 08, 2017 3:21:20 PM

Hi Cindy,

We got a copy of that from Energy Legal: Harkamal Multani, (Harkamal.Multani@ontario.ca).

Ron

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: June-08-17 15:17
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: 20170601-s 28 business case - IESO and OPG Indemnity OFHP -DRAFT

This is the document I'm referring to-- Cindy

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject:	RE: A note on IESO-OFA credit facility
Date:	Tuesday, December 05, 2017 2:36:31 PM
Attachments:	IESO Facility - BN v11.docx

Hi Ron,

Pls. see attached latest draft.

Thanks,

John

From: Ronald Kwan
Sent: Monday, December 04, 2017 7:25 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: A note on IESO-OFA credit facility

Hi John,

Some preliminary comments and suggestions.

Ron

From: John Kim
Sent: December-04-17 14:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached. In a separate call attended by EFB staff, Anthony confirmed our understanding. He indicated that they have consulted OPCD.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch

Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

IESO FAIR HYDRO PLAN CREDIT FACILITY
INTENDED USE – DISCUSSION WITH ENERGY STAFF

In a discussion with Energy staff [following comments heard in a call to discuss the Change of Law Protection Agreement call on December 1, 2017], Corporate and Electricity Finance Division (CEFD) staff became aware of ~~an additional~~one aspect of the use of the Ontario Financing Authority (OFA) $2 billion credit facility for the Independent Electricity System Operator (IESO) developed for the implementation of the Fair Hydro Plan (FHP).

For the "moratorium" period of the FHP where the customer bill increases are to be kept to the rate of inflation, the described plan would use the $2 billion credit facility provided by the OFA to cover interest costs and fees charged by the Fair Hydro Plan Trust (OPG Trust) to the IESO [TBC].

Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interest~~s~~ at the end of the moratorium period.

Furthermore, it is unclear how the IESO would [generate funds to] pay ~~back the credit facility and~~ the associated interest costs to the OFA for ~~these~~ drawdowns of the $2 billion credit facility; i.e., ratepayer recovered on an ongoing basis or be capitalized and paid off after the moratorium period.

Commented [SK1]: Wouldn't the CEA payments after the moratorium period pay back the facility. Just want to highlight that there are interest costs to be paid to the OFA during the moratorium period and unclear how those funds would be generated.

Commented [JK2R1]: It is most likely CEA but I think uncertainty remains?

Commented [GH3R1]: I moved this question to fiscal impact section below.

CONTEXT

The Independent Electricity System Operator (IESO) requested and ~~put in place~~entered into a revolving credit facility for an amount of up to $2 billion from the 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 obtained a Lending Directive from the Minister of Finance on June 29, 2017.

- The $2 billion IESO FHP-related facility was requested with an initial term of 5-years plus a contingency of three months (effectively expiring on September 30, 2022).
- The request in part enabled the IESO to have the facility beyond the initial moratorium period of customer bill increases being constrained by the rate of inflation.

In the briefing note outlining CEFD and other OFA staff recommendation to the Minister of Finance, there were three rationales ~~were~~ provided ~~to enact~~for the requested $2 billion credit facility:

- One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.
- At the time of initial consideration, it was ~~often~~also discussed that under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which led to discussions around how it could result in longer than planned IESO draws on the credit facility and a large balance accumulating in the facility.

Formatted: Indent: Left: 0.25"

- In the recommendation, staff referenced the need to allow the IESO to finance short to medium term funding shortfalls in its role in the FHP. It was always anticipated that there would be short and medium term timing differences in funding as mentioned in the Briefing Note as part of the Minister's Directive Package (see the actual wording below):

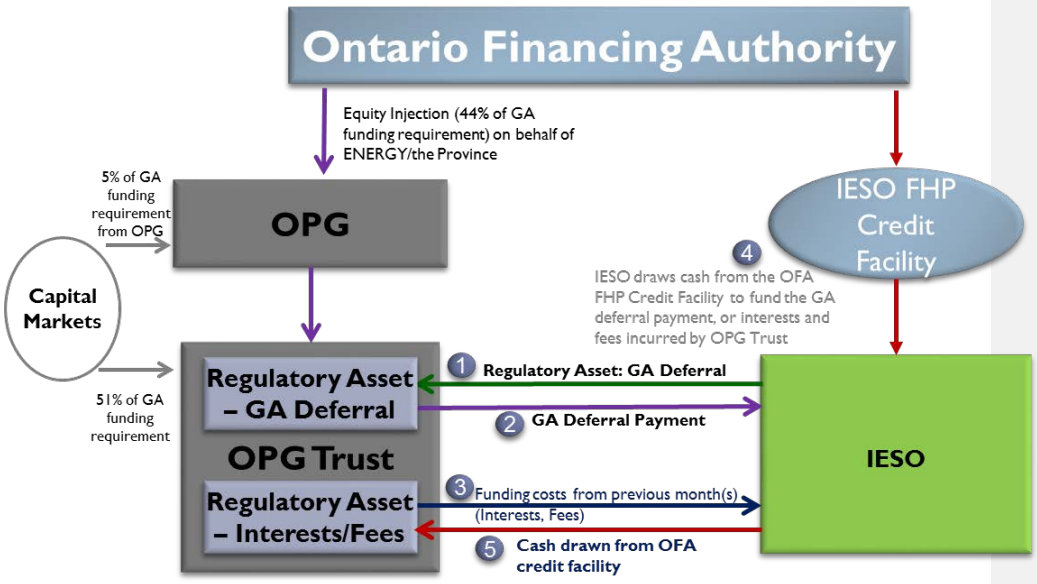
  This will help the IESO to fulfil the commitments under the OFHP Act as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- ~~One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.~~

INTENDED USE OF THE FHP-RELATED FACILITY

As in many policy initiatives, the program parameters continue to evolve for a number of FHP-related items, including the use of the $2 billion OFA facility for the IESO. Energy staff indicated that in order to facilitate the implementation of the FHP, the IESO will likely utilize the $2 billion OFA credit facility to defer the interest cost and fees component of the global adjustment (GA) deferral for the first 4 years of the FHP when the customer bills are to increase only by the rate of inflation.

See the diagram below for details of how the deferral of the interest cost and fees would occur in parallel to the deferral of the GA amounts:



1. *IESO calculates the total amount of GA deferral for the month*
2. *OPG pays the GA deferral amount to the IESO*
3. *OPG calculates the total ~~funding costs~~interest cost and fees ~~,(i.~~e.g., interest~~s~~, management fees, ~~and~~ etc., for the previous month), and send~~s~~ the invoice to the IESO*
4. *IESO draws cash from the OFA FHP Credit Facility to pay for the funding costs incurred by OPG Trust. IESO could use the credit facility to pay for the GA deferral amount as well in case of a shortfall*
5. *IESO prepares the Regulatory Assets, which consist of the GA deferral amount for the month and payment for the funding costs for the previous month, and sells the Regulatory Assets to OPG Trust.*

ANALYSIS

The ~~main intended~~ use of the credit facility~~'s role~~ to specifically fund interest cost and fees for the first four years is a ~~new~~relatively recent development for the intended use of the facility.

Short to medium term funding shortfalls were~~, at times,~~ always expected to be financed by this facility, as there would be potential timing differences each monthly settlement period and the OPG trust is not required to purchase the regulatory asset. In addition, ~~and~~ there were explicit discussions about the potential for market interruptions that could lead the IESO to be required to finance~~hold on to~~ deferrals related to the GA refinancing.

A systemic use of the facility for funding interest costs and fees for the first four years, while ~~is~~ a ~~new~~relatively recent development/understanding for CEFD staff, it could be seen as consistent with the purpose of the facility to support the IESO in managing short and medium term timing differences and the OPG financing entity's potential constraints in providing financing.

As the borrowing to fund interest cost and fees would only begin to be paid off after the initial moratorium period, the accumulation of interest cost and fees in the $2 billion credit facility would lead to decreased room for future GA deferral/borrowing needs. As such there may be a request for an expansion to the credit facility in the future. This is not expected to be likely in the ordinary course of operations of the FHP, as the otherwise largest purpose of the facility was to provide financing in the initial period before the OPG financing entity was fully established and able to acquire the regulatory asset.

FISCAL IMPACT~~iscal Impact~~

OPCD would need to opine on the potential fiscal impacts [TBC] of this funding structure due to the ongoing and cumulative nature of the funding of ~~fees and~~ interest cost~~s~~ and fees via the $2 billion credit facility.

If the IESO draws cash from the FHP credit facility to fund interest cost and fees for the first four years, it's unclear how and when IESO will pay back the credit facility, i.e. OPG creates an account payable, or equivalent, to the IESO for the cash received, and pays it back when the collection of Clean Energy Adjustments starts.

[IESO staff indicated that they have consulted with OPCD staff on the accounting structure of such intended use of the IESO FHP credit facility, and there won't be a fiscal impact to the Province as it was set out via regulation. CEFD staff is getting clarification from OPCD on this.]

Without a mechanism to link the interest costs and fees back to the ratepayers, there could be fiscal implications related to such costs.

~~Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interests at the end of the moratorium period.~~

~~Furthermore, it is unclear how the IESO would pay the interest costs to the OFA for these drawdowns of the $2 billion credit facility; i.e., ratepayer recover on an ongoing basis or be capitalized.~~

Commented [RK4]: Need more elaboration on this – options?

BACKGROUND

MINISTER'S DIRECTIVE

On June 29, 2017, Minister of Finance's Lending Directive authorized 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 also included 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, consistent with the spread for current and past OFA credit facilities for the IESO.

- The credit facility agreement shall be subject to such other terms as the OFA deems appropriate from time to time.

  - This standard clause in the Minister's Directive was utilized recently to allow for changes to the definition of the Permitted Liens and other related sections of the OEFC lending agreements.

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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.

- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If the IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017* to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred GA amount.

FHP ACT

- 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 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 right to recover the deferred amounts in the future) to a financing entity.
  - It is anticipated that the regulatory asset will be purchased by the financing entity to be established by OPG (OPG Trust).
  - The cash received from selling the regulatory asset will be used by the IESO to fund the incurred GA shortfall.
  - For the first four years, it [now] appears that part of the deferred amounts related to ~~carrying costs~~ interest cost and fees would be funded through IESO's facility from the OFA.

- The IESO had always been expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.
  - Even once the OPG Trust is fully set up to borrow, there is expected to be continued timing differences between the IESO's monthly settlement process when it has to pay generators and when the Trust purchases the asset from IESO.
  - Also, under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which could result in longer than planned IESO draws on the credit facility, and an accumulation of a larger balance in the facility.

OFA FACILITIES FOR IESO

- An existing credit facility between the IESO and the OFA is currently available for $475 million (previously $975 million), which includes support for the current Regulated Price Plan (RPP) program. The IESO has proposed that a separate 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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

Existing OFA-IESO Facility	New Proposed OFA-IESO FHP Facility

Pre-Existing 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**

- The OFA facilities provided to the IESO currently have the intercept provision as required under the OFA's Lending Policy, dated April 16, 2010. The pre-existing $975 million facility (now the $475 million facility) was amended to incorporate the required intercept provision. The intercept provision is intended to provide security to the OFA in its role as a lender to public bodies.

IESO

- 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
December 4, 2017

From:	Ronald Kwan
To:	John Kim
Cc:	Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject:	RE: A note on IESO-OFA credit facility
Date:	Monday, December 04, 2017 7:25:05 PM
Attachments:	IESO Facility - BN v6_Markup.docx

Hi John,

Some preliminary comments and suggestions.

Ron

From: John Kim
Sent: December-04-17 14:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached. In a separate call attended by EFB staff, Anthony confirmed our understanding. He indicated that they have consulted OPCD.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

IESO FAIR HYDRO PLAN CREDIT FACILITY
INTENDED USE – DISCUSSION WITH ENERGY STAFF

In a discussion with Energy staff [following comments heard in a call to discuss the Change of Law Protection Agreement call on December 1, 2017], Corporate and Electricity Finance Division (CEFD) staff became aware of ~~an additional~~one aspect of the use of the Ontario Financing Authority (OFA) $2 billion credit facility for the Independent Electricity System Operator (IESO) developed for the implementation of the Fair Hydro Plan (FHP).

For the "moratorium" period of the FHP where the customer bill increases are to be kept to the rate of inflation, the described plan would use the $2 billion credit facility provided by the OFA to cover interest costs and fees charged by the Fair Hydro Plan Trust (OPG Trust) to the IESO [TBC].

Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interests at the end of the moratorium period.

Furthermore, it is unclear how the IESO would pay the interest costs to the OFA for these drawdowns of the $2 billion credit facility; i.e., ratepayer recover on an ongoing basis or be capitalized

CONTEXT

The Independent Electricity System Operator (IESO) requested and ~~put in place~~entered into a revolving credit facility for an amount of up to $2 billion from the 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 obtained a Lending Directive from the Minister of Finance on June 29, 2017.

- The $2 billion IESO FHP-related facility was requested with an initial term of 5-years plus a contingency of three months (effectively expiring on September 30, 2022).

- The request in part enabled the IESO to have the facility beyond the initial moratorium period of customer bill increases being constrained by the rate of inflation.

In the briefing note outlining CEFD and other OFA staff recommendation to the Minister of Finance, there were three rationales ~~were~~ provided ~~to enact~~for the requested $2 billion credit facility:

- One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.

- At the time of initial consideration, it was ~~often~~also discussed that under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which led to discussions around how it could result in longer than planned IESO draws on the credit facility and a large balance accumulating in the facility.

Formatted: Indent: Left: 0.25"

Formatted: Indent: Left: 0.25"

Formatted: Indent: Left: 0.25"

- In the recommendation, staff referenced the need to allow the IESO to finance short to medium term funding shortfalls in its role in the FHP. It was always anticipated that there would be short and medium term timing differences in funding as mentioned in the Briefing Note as part of the Minister's Directive Package (see the actual wording below):

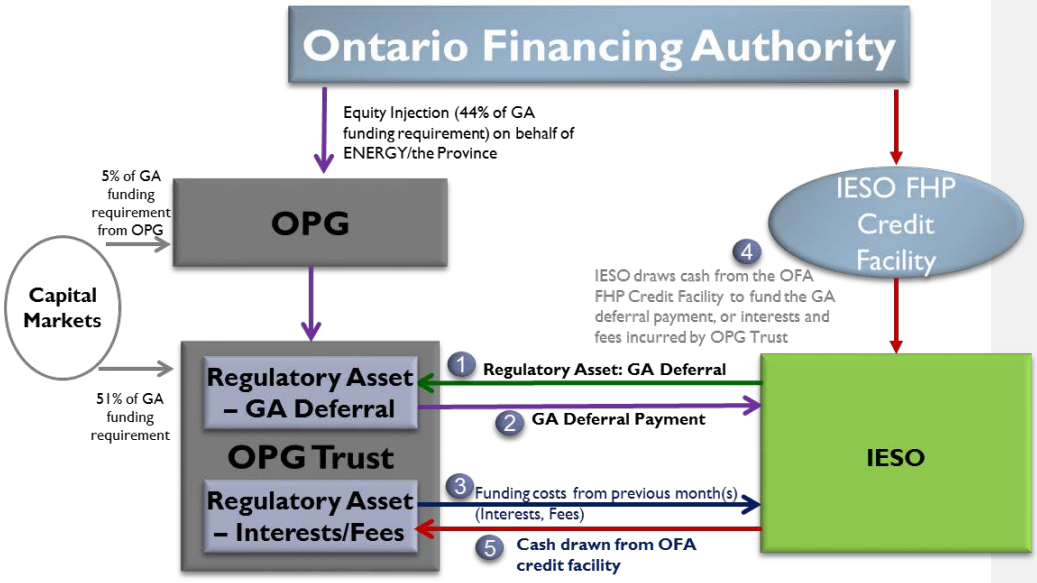
  This will help the IESO to fulfil the commitments under the OFHP Act as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- ~~One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.~~

INTENDED USE OF THE FHP-RELATED FACILITY

As in many policy initiatives, the program parameters continue to evolve for a number of FHP-related items, including the use of the $2 billion OFA facility for the IESO. Energy staff indicated that in order to facilitate the implementation of the FHP, the IESO will likely utilize the $2 billion OFA credit facility to defer the interest and fees component of the global adjustment (GA) deferral for the first 4 years of the FHP when the customer bills are to increase only by the rate of inflation.

See the diagram below for details of how the deferral of the interest and fees would occur in parallel to the deferral of the GA amounts:



1. *IESO calculates the total amount of GA deferral for the month*
2. *OPG pays the GA deferral amount to the IESO*
3. *OPG calculates the total funding costs~~,~~ ~~(i.~~e.g.*, interest~~s~~, management fees, ~~and~~ etc., for the previous month~~)~~, and send~~s~~ the invoice to the IESO*
4. *IESO draws cash from the OFA FHP Credit Facility to pay for the funding costs incurred by OPG Trust. IESO could use the credit facility to pay for the GA deferral amount as well in case of a shortfall*
5. *IESO prepares the Regulatory Assets, which consist of the GA deferral amount for the month and payment for the funding costs for the previous month, and sells the Regulatory Assets to OPG Trust.*

ANALYSIS

The ~~main intended~~ use of the credit facility's role to specifically fund interest and fees for the first four years is a ~~new~~relatively recent development for the intended use of the facility.

Short to medium term funding shortfalls were~~, at times,~~ always expected to be financed by this facility, as there would be potential timing differences each monthly settlement period and the OPG trust is not required to purchase the regulatory asset. In addition, ~~and~~ there were explicit discussions about the potential for market interruptions that could lead the IESO to be required to finance~~hold on to~~ deferrals related to the GA refinancing.

A systemic use of the facility for funding interest costs and fees for the first four years, while ~~is~~ a ~~new~~relatively recent development/understanding for CEFD staff, it could be seen as consistent with the purpose of the facility to support the IESO in managing short and medium term timing differences and the OPG financing entity's potential constraints in providing financing.

As the borrowing to fund interest and fees would only begin to be paid off after the initial moratorium period, the accumulation of interest and fees in the $2 billion credit facility would lead to decreased room for future GA deferral/borrowing needs. As such there may be a request for an expansion to the credit facility in the future. This is not expected to be likely in the ordinary course of operations of the FHP, as the otherwise largest purpose of the facility was to provide financing in the initial period before the OPG financing entity was fully established and able to acquire the regulatory asset.

OPCD would need to opine on the potential fiscal impacts [TBC] of this funding structure due to the ongoing and cumulative nature of the funding of fees and interest costs via the $2 billion credit facility.

~~Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interests at the end of the moratorium period.~~

~~Furthermore, it is unclear how the IESO would pay the interest costs to the OFA for these drawdowns of the $2 billion credit facility; i.e., ratepayer recover on an ongoing basis or be capitalized~~.

Commented [RK1]: Need more elaboration on this – options?

BACKGROUND

MINISTER'S DIRECTIVE

On June 29, 2017, Minister of Finance's Lending Directive authorized 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 also included 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, consistent with the spread for current and past OFA credit facilities for the IESO.

- The credit facility agreement shall be subject to such other terms as the OFA deems appropriate from time to time.

  - This standard clause in the Minister's Directive was utilized recently to allow for changes to the definition of the Permitted Liens and other related sections of the OEFC lending agreements.

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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.

- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If the IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017* to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred GA amount.

FHP ACT

- 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 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 right to recover the deferred amounts in the future) to a financing entity.
  - It is anticipated that the regulatory asset will be purchased by the financing entity to be established by OPG (OPG Trust).
  - The cash received from selling the regulatory asset will be used by the IESO to fund the incurred GA shortfall.

- For the first four years, it [now] appears that part of the deferred amounts related to carrying costs would be funded through IESO's facility from the OFA.

- The IESO had always been expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.
  - Even once the OPG Trust is fully set up to borrow, there is expected to be continued timing differences between the IESO's monthly settlement process when it has to pay generators and when the Trust purchases the asset from IESO.
  - Also, under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which could result in longer than planned IESO draws on the credit facility, and an accumulation of a larger balance in the facility.

OFA FACILITIES FOR IESO

- An existing credit facility between the IESO and the OFA is currently available for $475 million (previously $975 million), which includes support for the current Regulated Price Plan (RPP) program. The IESO has proposed that a separate 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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA-IESO Facility	**New Proposed OFA-IESO FHP Facility**
Pre-Existing 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**

- The OFA facilities provided to the IESO currently have the intercept provision as required under the OFA's Lending Policy, dated April 16, 2010. The pre-existing $975 million facility (now the $475 million facility) was amended to incorporate the required intercept provision. The intercept provision is intended to provide security to the OFA in its role as a lender to public bodies.

IESO

- 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
December 4, 2017

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject: RE: A note on IESO-OFA credit facility
Date: Thursday, December 07, 2017 1:29:58 PM

Hi Ron,

Just to update you….confirmed with Energy/OPCD that the concern we had on the financing of the interest costs was a false alarm. The interest component would be packaged off each period to OPG Trust.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, December 05, 2017 5:34 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: Re: A note on IESO-OFA credit facility

Hi John,

Sure, please share.

Ron

From: John Kim
Sent: December 5, 2017 5:29 PM
To: Ronald Kwan
Cc: Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject: RE: A note on IESO-OFA credit facility

Sure, we were hoping to use this note to have that discussion with various groups, including OPCD. Would it be okay if we share it with OPCD?

John

From: Ronald Kwan
Sent: Tuesday, December 05, 2017 5:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee

Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: Re: A note on IESO-OFA credit facility

Thanks John.

Will you be able to get more from OPCD on why there is no fiscal issue with the IESO drawing on the OFA facility for this purpose?

Ron

From: John Kim
Sent: December 5, 2017 2:36 PM
To: Ronald Kwan
Cc: Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject: RE: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached latest draft.

Thanks,

John

From: Ronald Kwan
Sent: Monday, December 04, 2017 7:25 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: A note on IESO-OFA credit facility

Hi John,

Some preliminary comments and suggestions.

Ron

From: John Kim
Sent: December-04-17 14:55
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached. In a separate call attended by EFB staff, Anthony confirmed our understanding. He indicated that they have consulted OPCD.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim; Shajee Kathirgamanathan; Gavin He
Subject:	RE: ARMC FHP deck
Date:	Sunday, June 11, 2017 1:43:01 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v18_clean).pptx OFA ARMC - FHP Briefing (2017 06 01 v18_mark-up.pptx

Hi Ron

Thanks. I think your edits work. I suggested a couple of minor edits on slide 12 (last couple of bullets). As an option we could leave the financing details out of Slide 12 as they are reviewed on slide 14 as well.

Also See my comments on slide 13 to answer your questions.

Last general comment - although I haven't proposed edits in attached markup - is to add "Illustrative" to some of the slide titles where we present numbers to make clear that these are estimates based on certain assumptions.

Thanks
Bruno

From: Ronald Kwan
Sent: Saturday, June 10, 2017 4:46 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: ARMC FHP deck

Hi Bruno,

Thanks. Looks good.

I made a few more suggested text edits – please review.

I was also thinking about a couple changes to the flow charts. One to add in the OEB (as such, some suggested relabelling of the ABC's etc.), and the other is to put the Trust up on top, so switching the order. Please take a look.

Ron

From: Bruno Amara
Sent: June-09-17 4:07 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: ARMC FHP deck

Hi Ron

The attached deck is revised per your edits and comments. Slide 12 is a combination of a slide you had edited to explain the financial structure and the chart which you were wondering if it was needed. We thought it worked to combine the two to help explain the structure. But we can remove chart if you prefer to go without it.

Added some notes to Note pages for equity injection and IESO credit facility slides.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

DRAFT

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

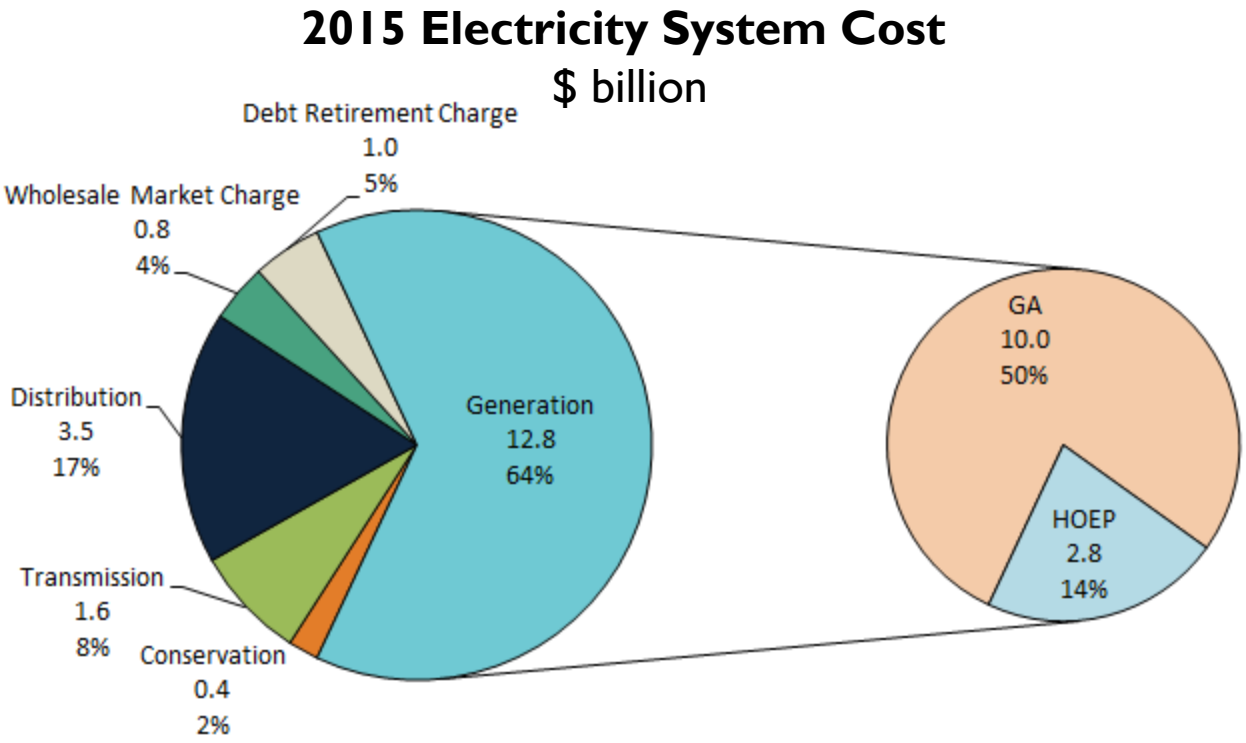
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

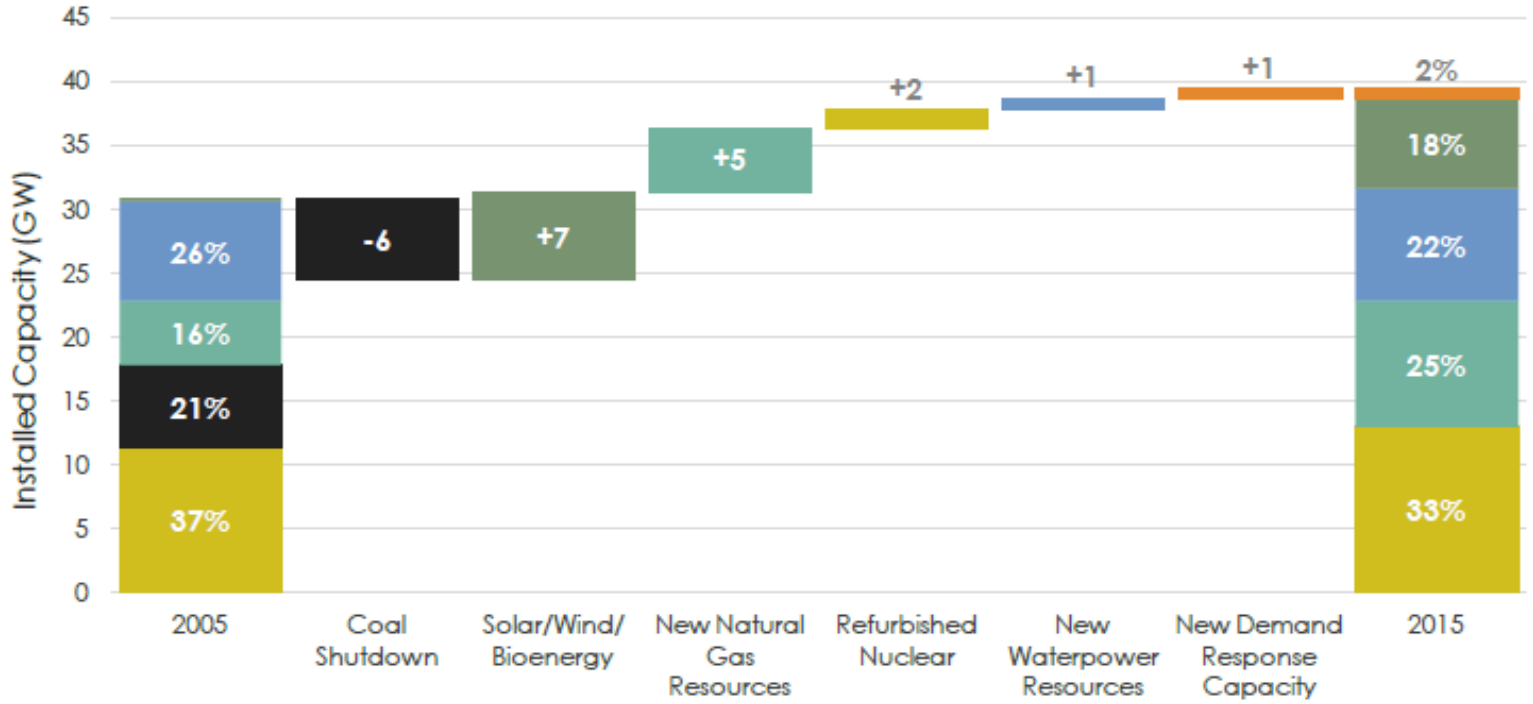
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

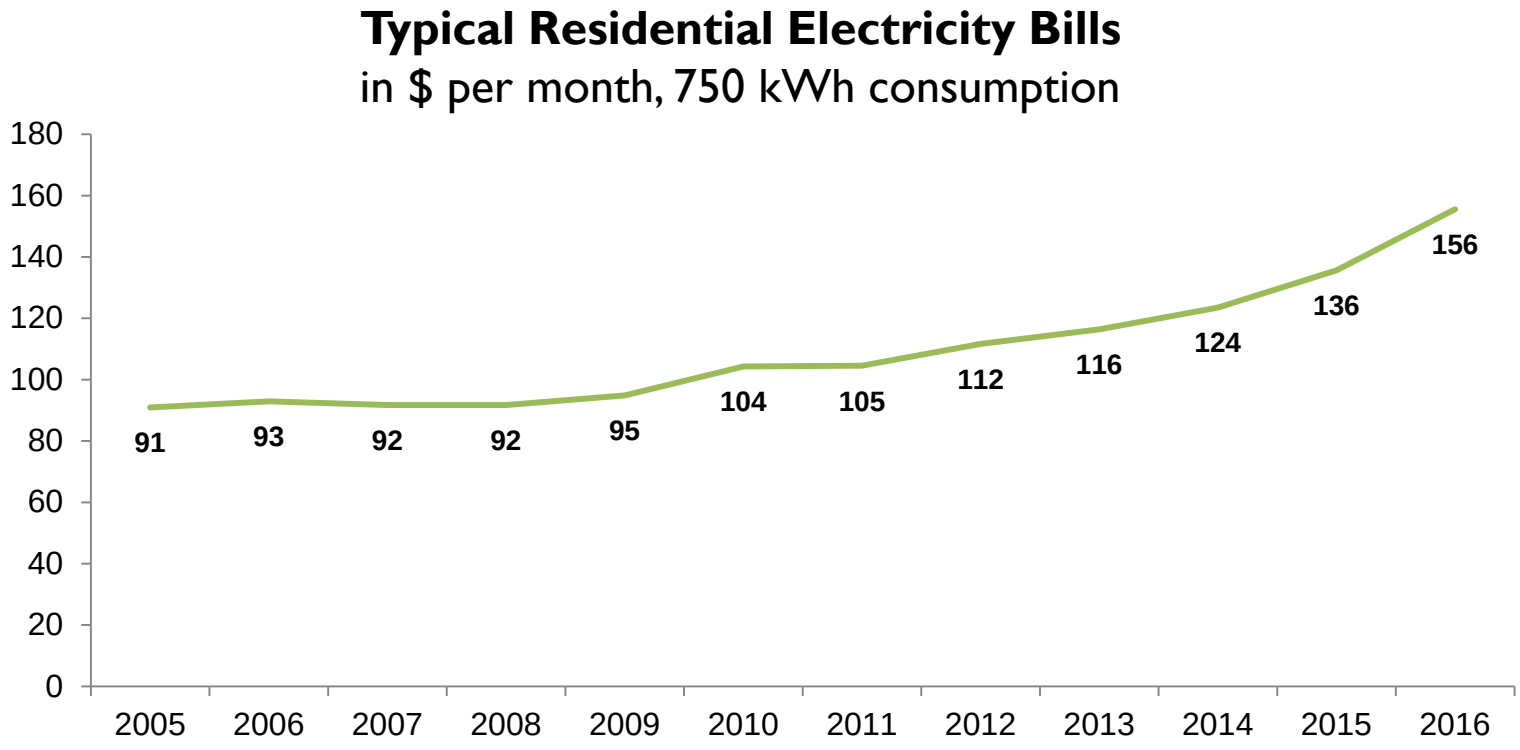
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

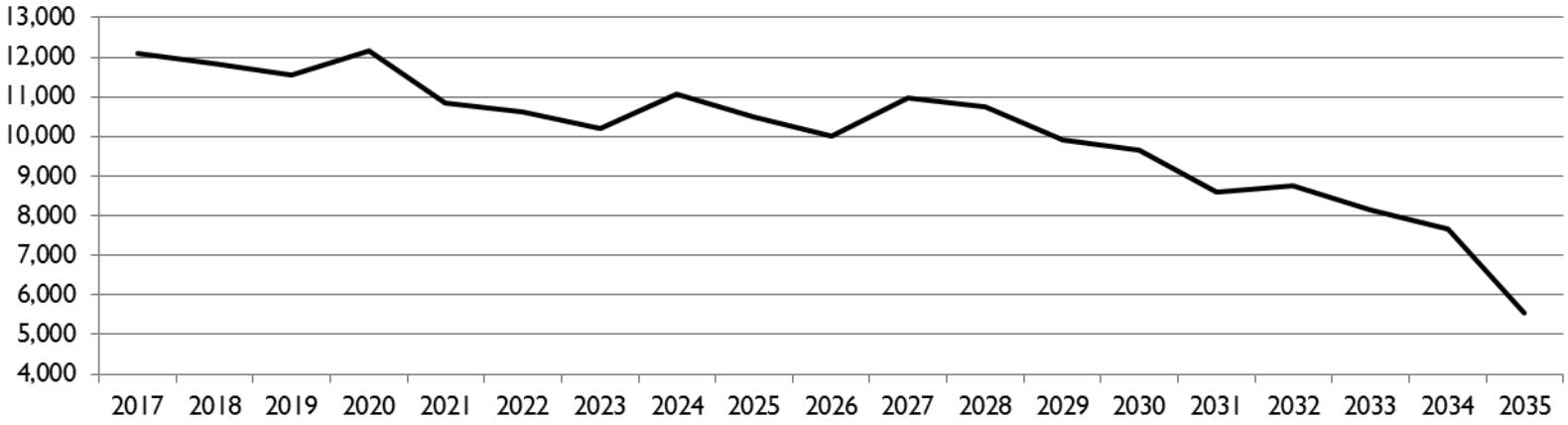
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

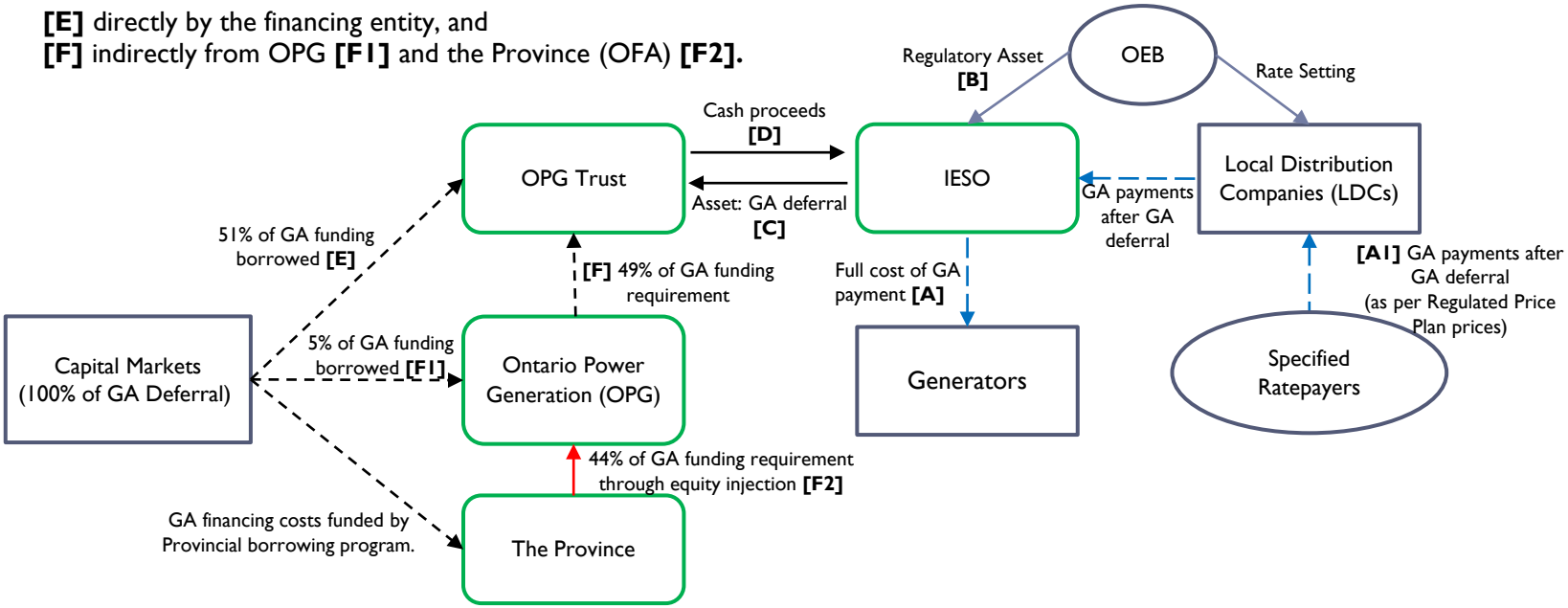
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

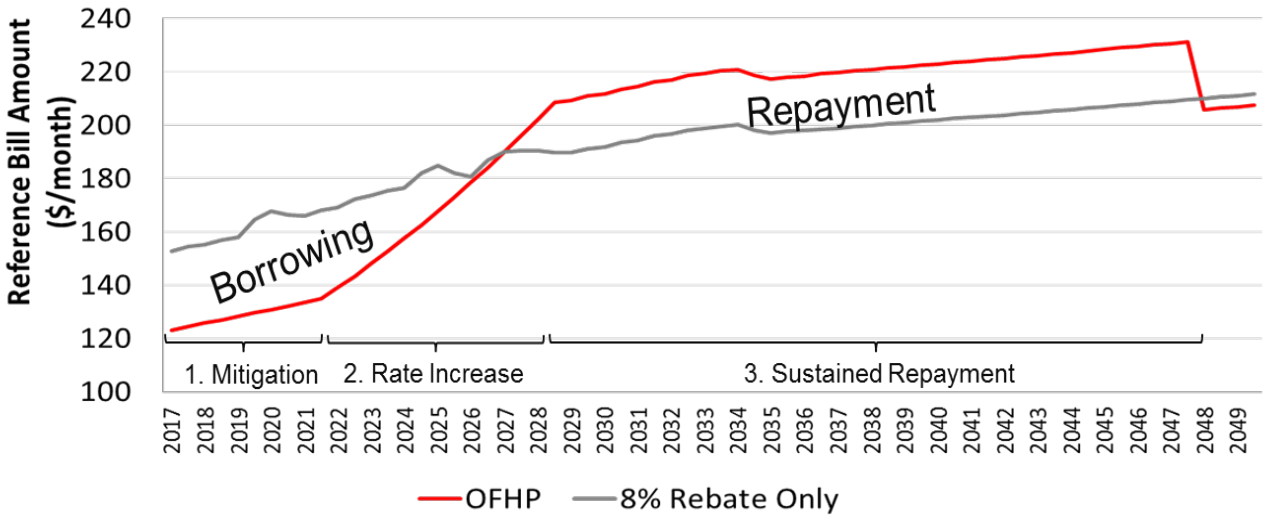
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments)
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG **[F1]** and the Province (OFA) **[F2].**



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

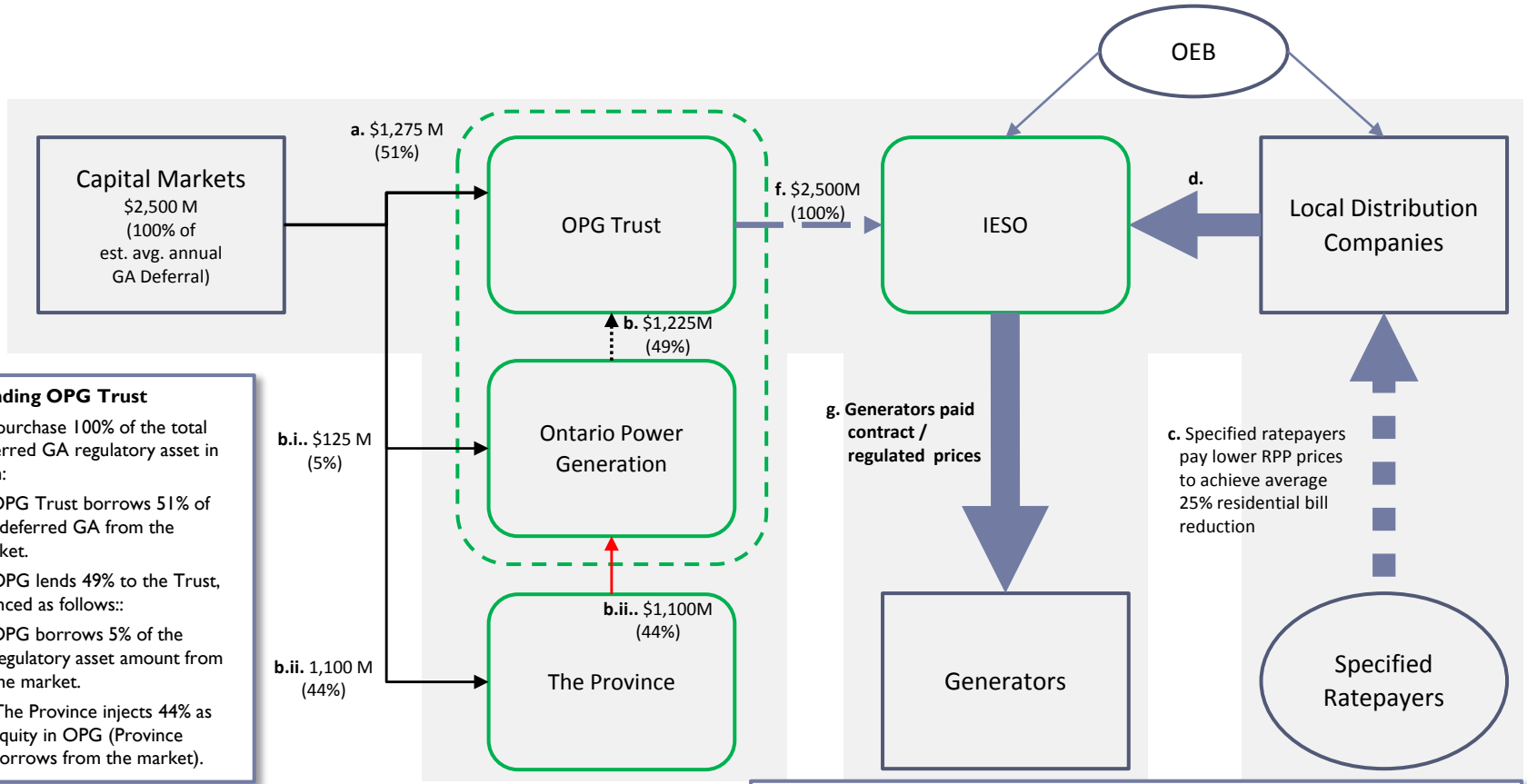
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill remains higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference represents deferral of GA and financing.

DRAFT

GA Financing Structure: Fund Flows - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

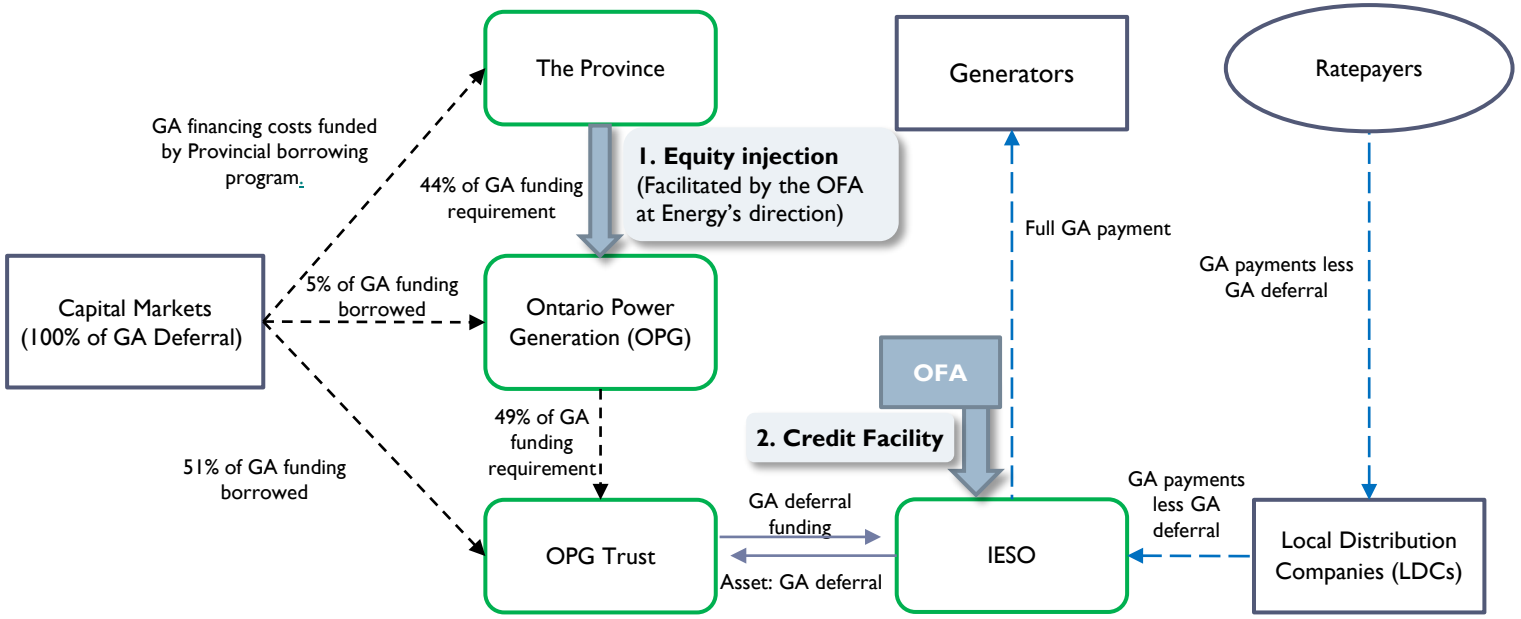
e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

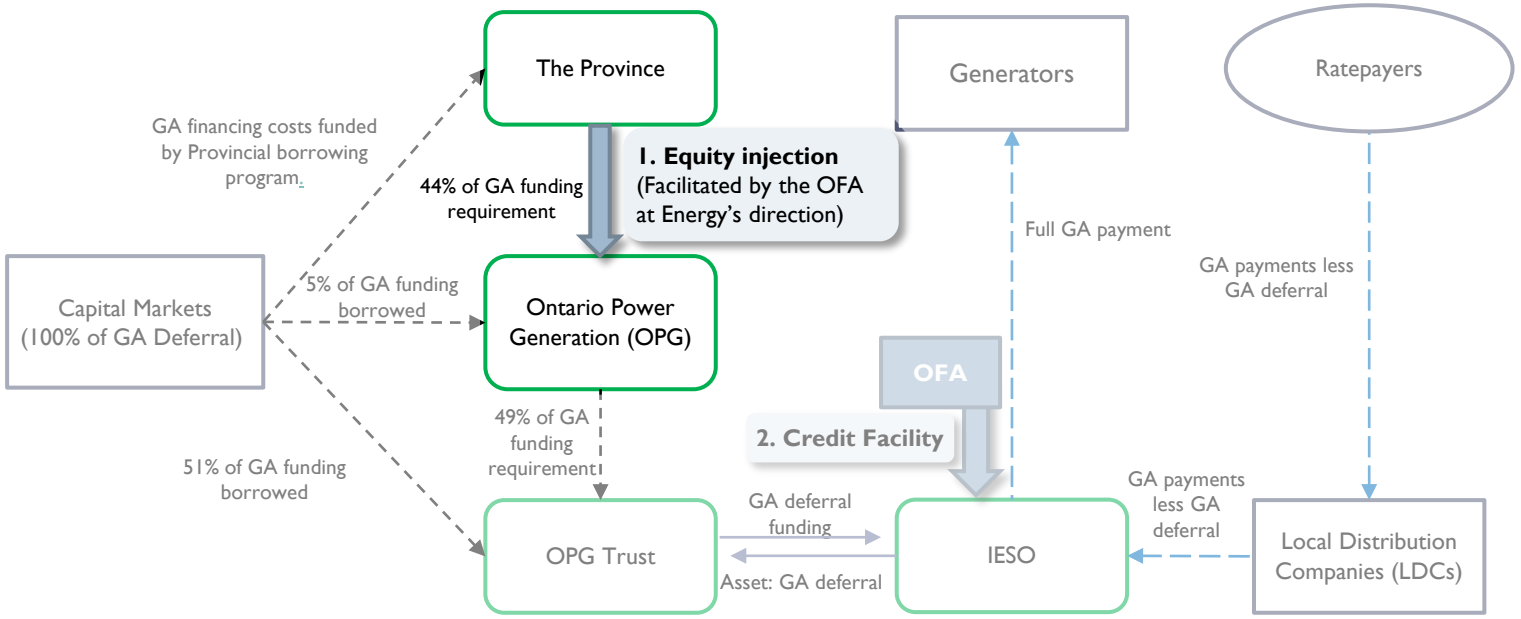
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO
- The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded.



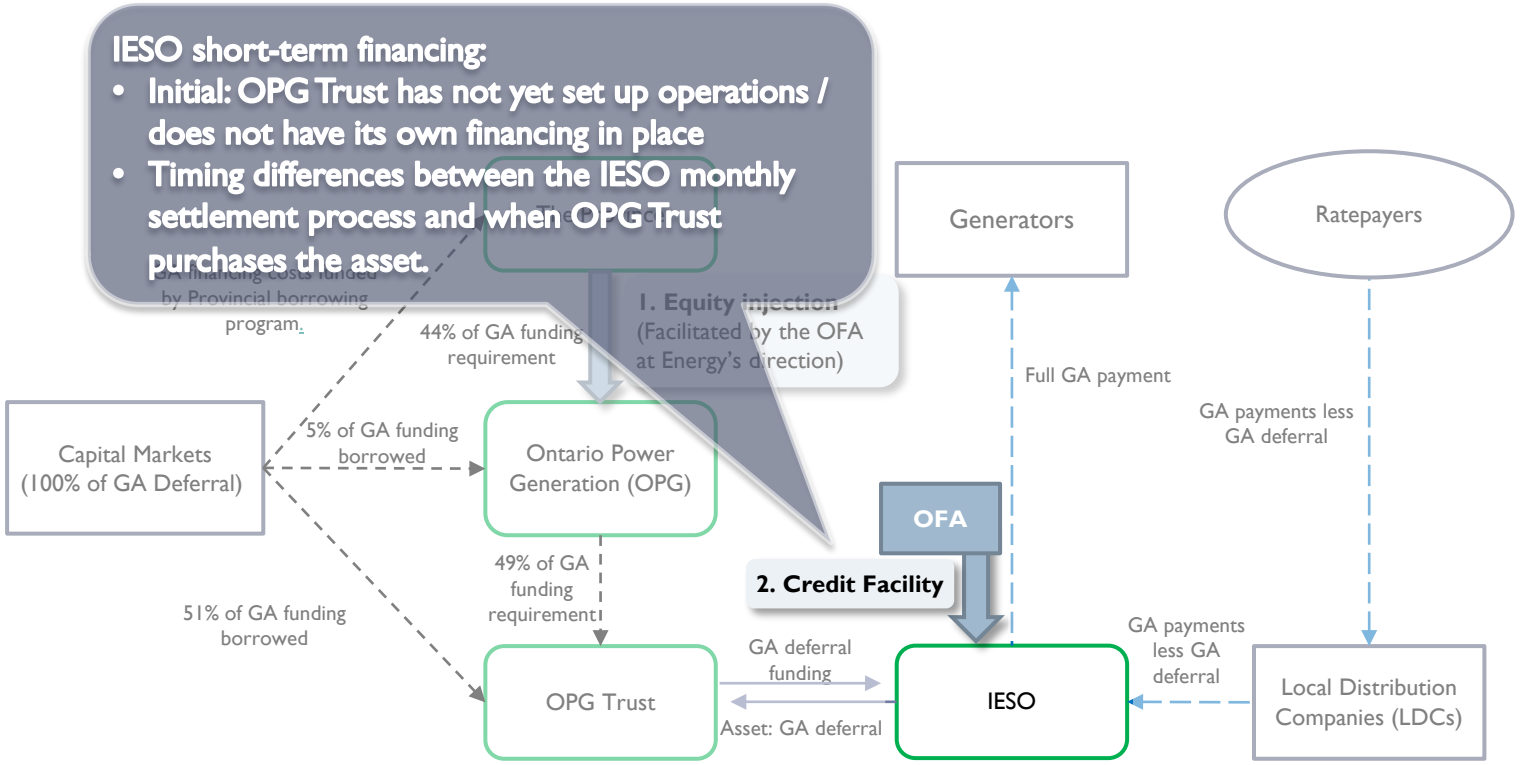
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1B related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which would be
  - offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

DRAFT

GA Financing – Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

DRAFT

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

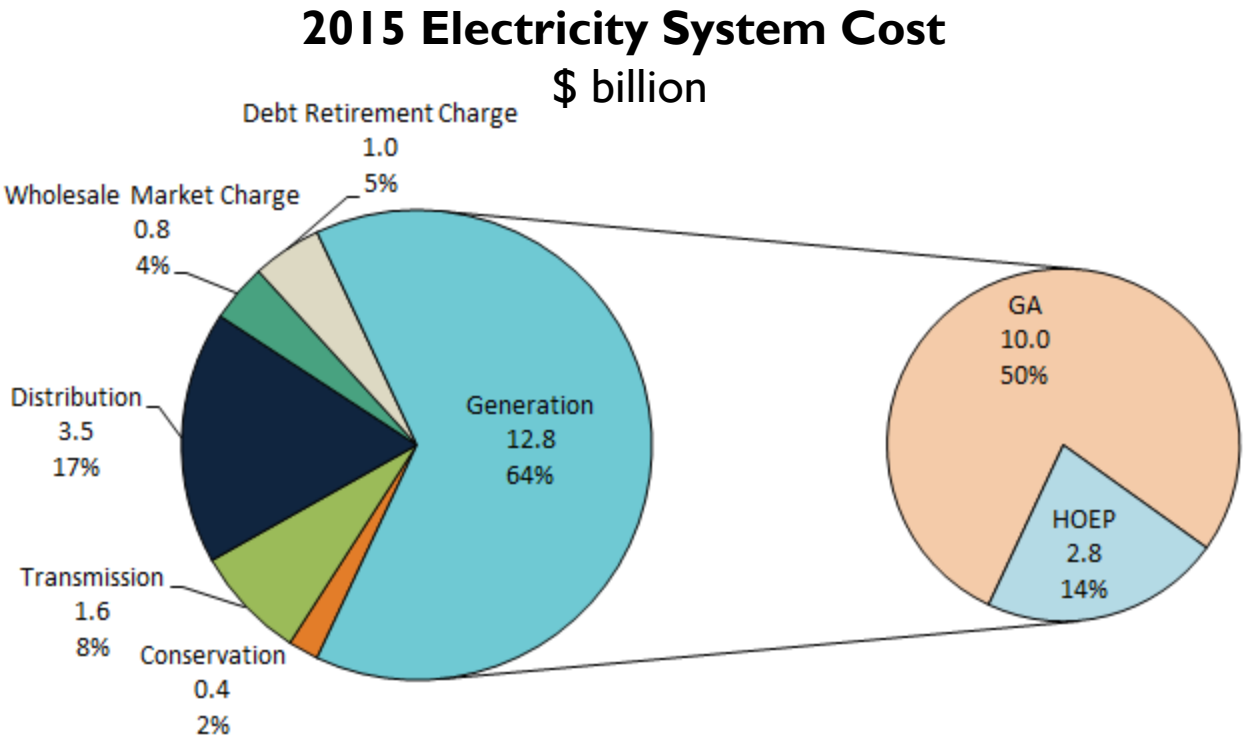
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

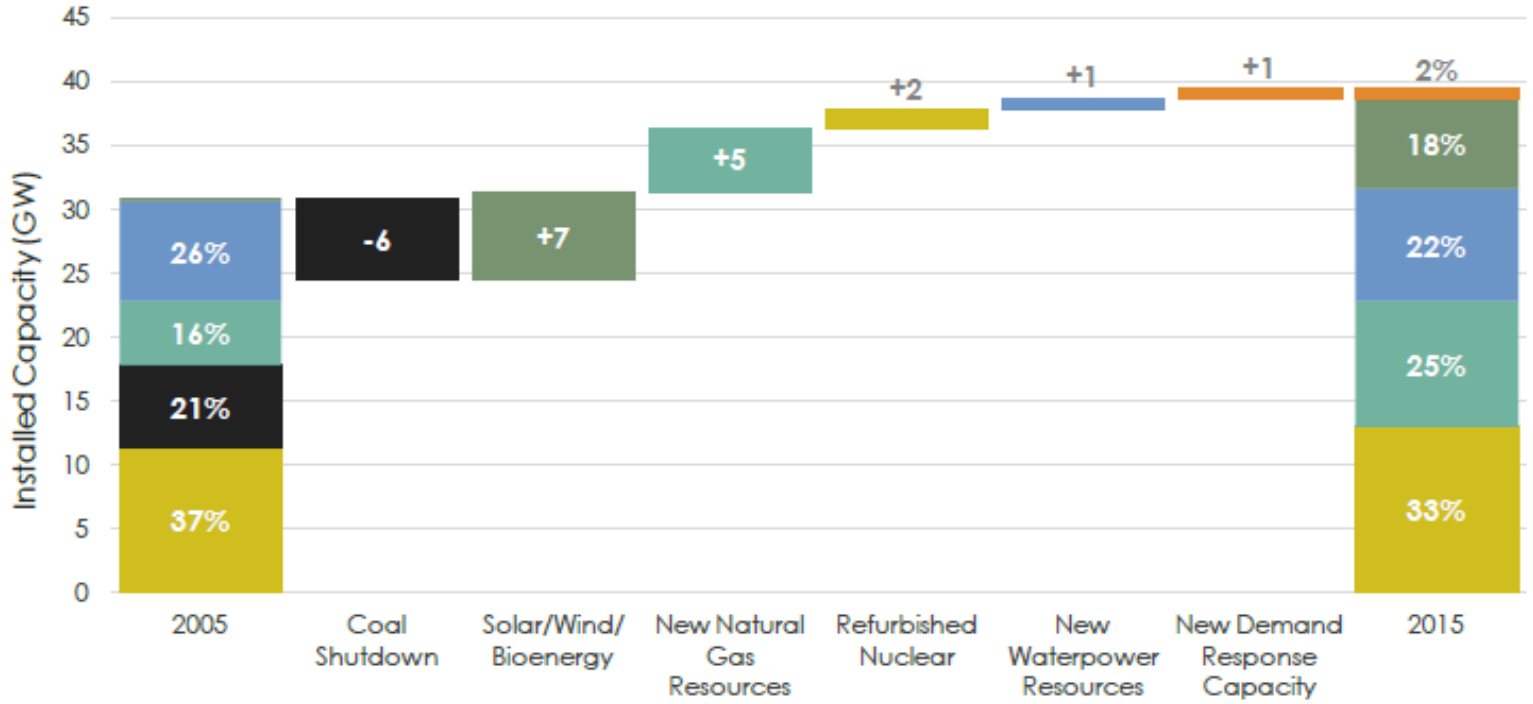
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

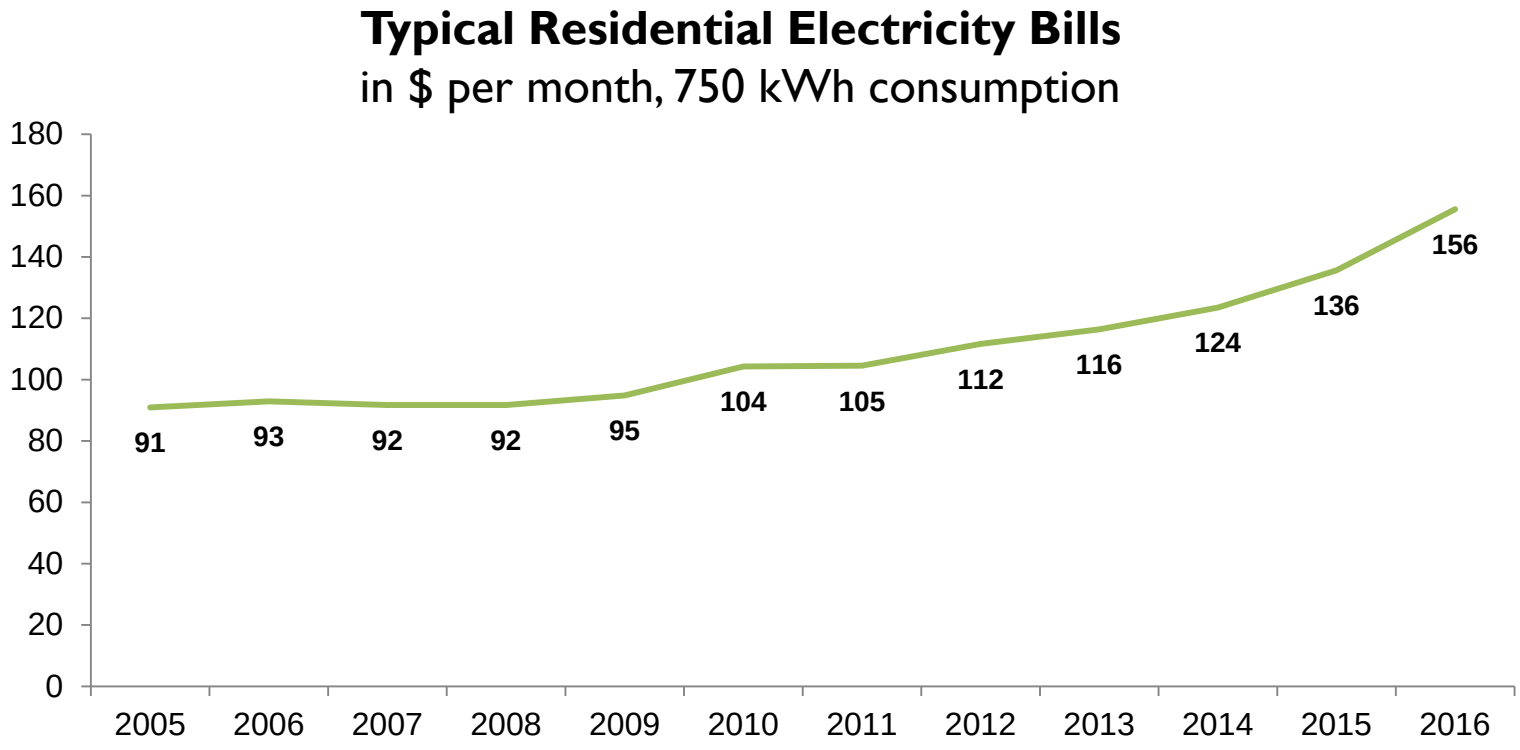
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

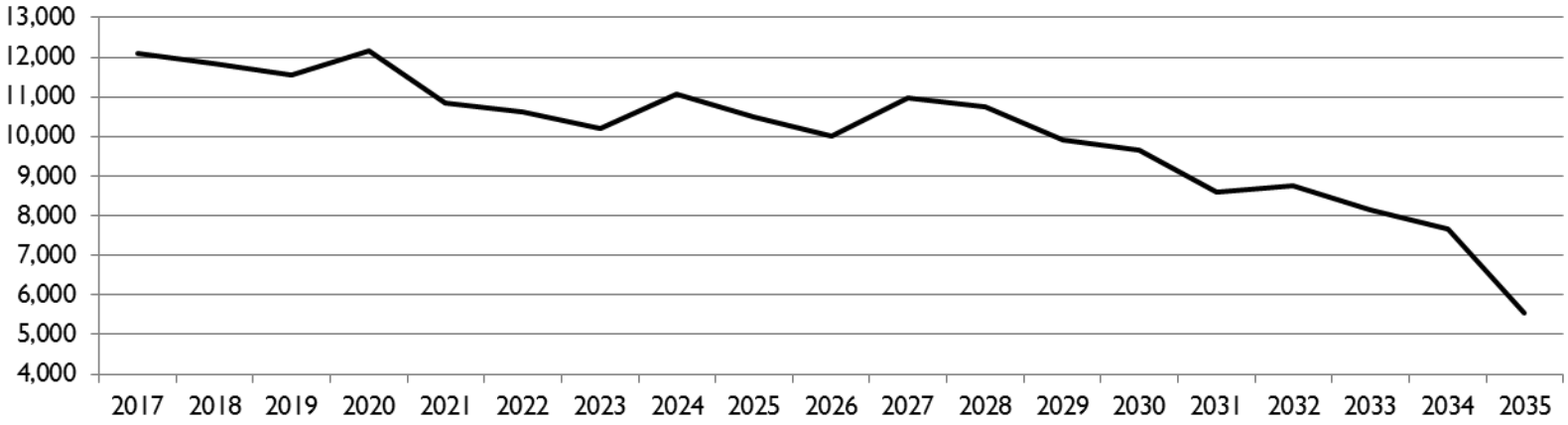
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

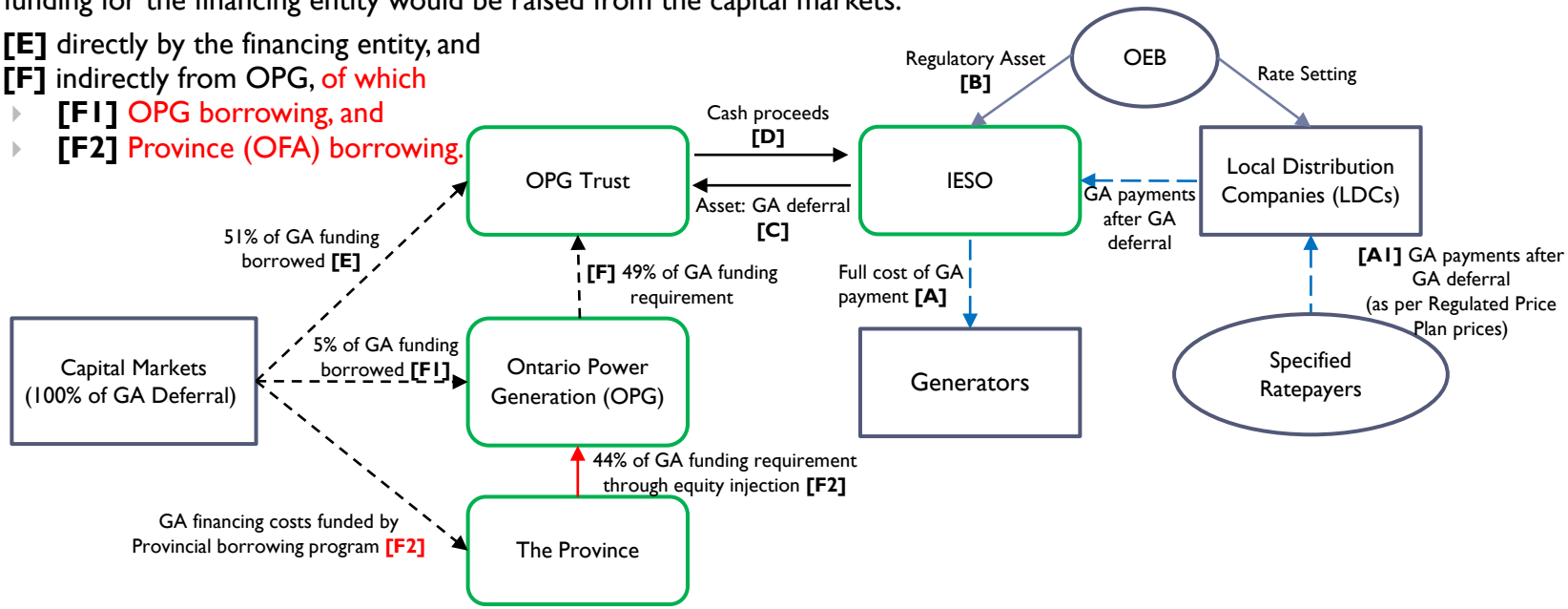
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

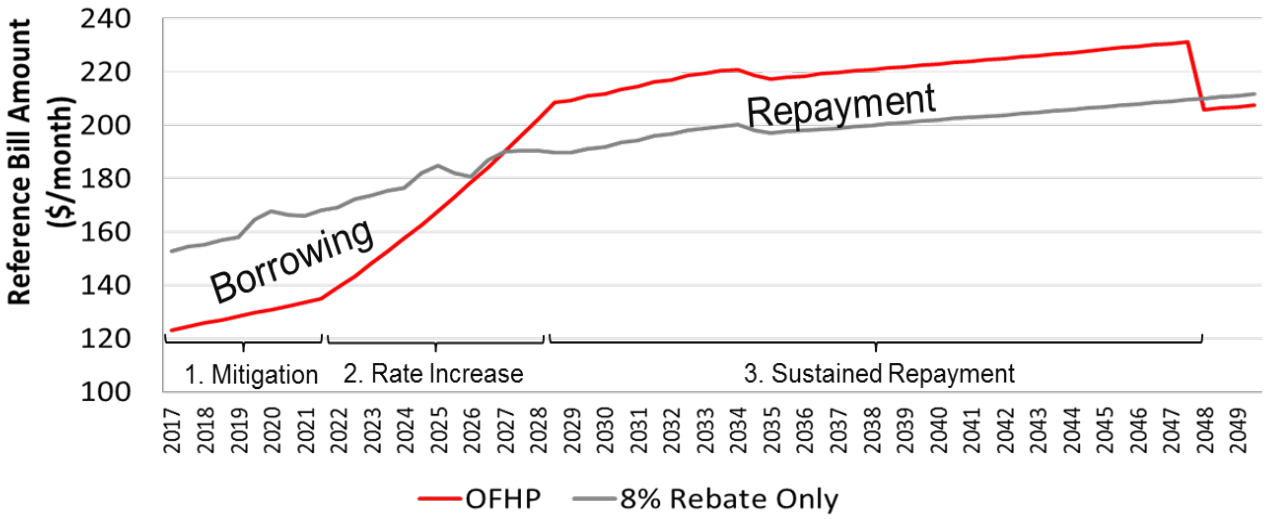
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments)
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

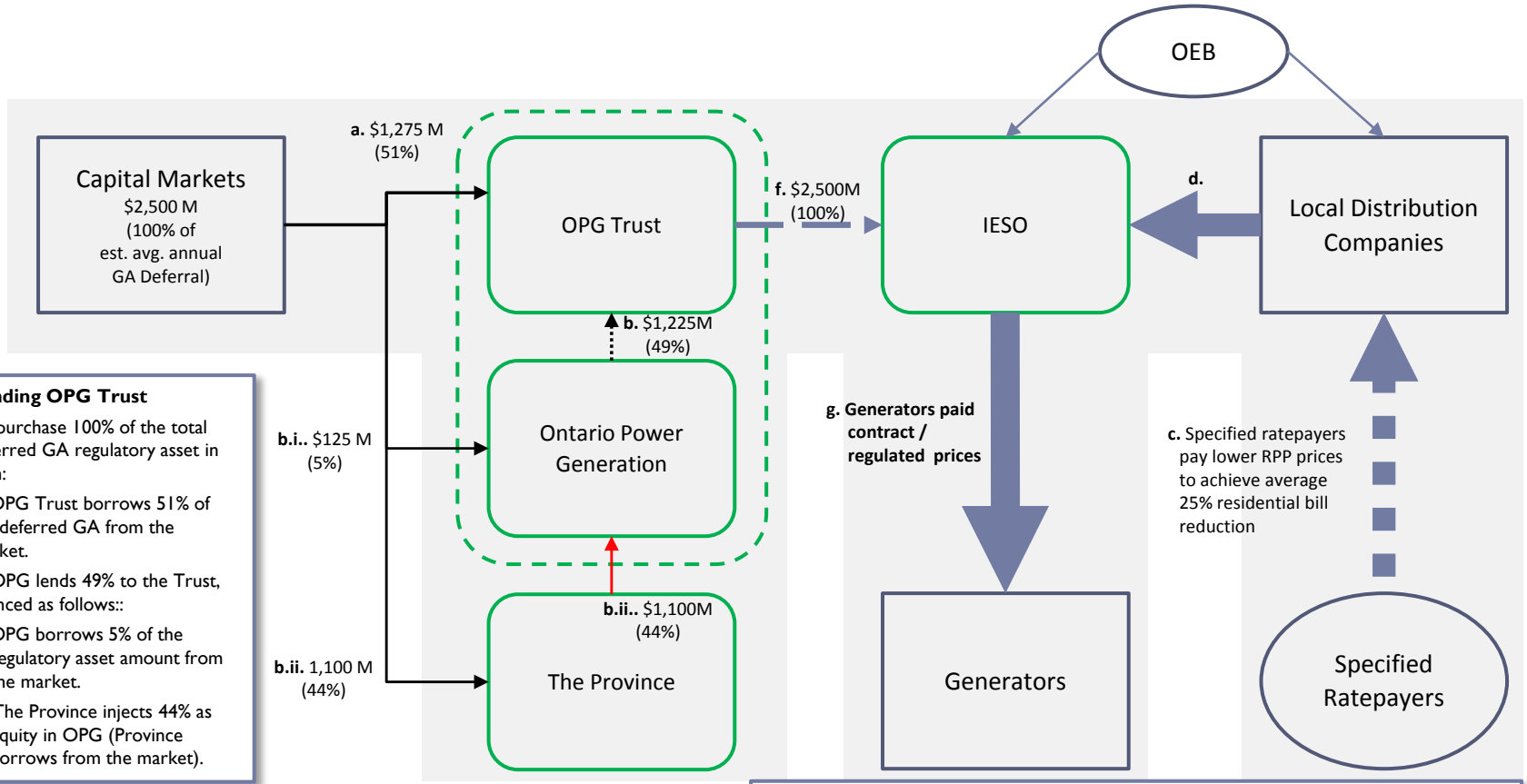
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill remains higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference represents deferral of GA and financing.

DRAFT

GA Financing Structure: Fund Flows - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

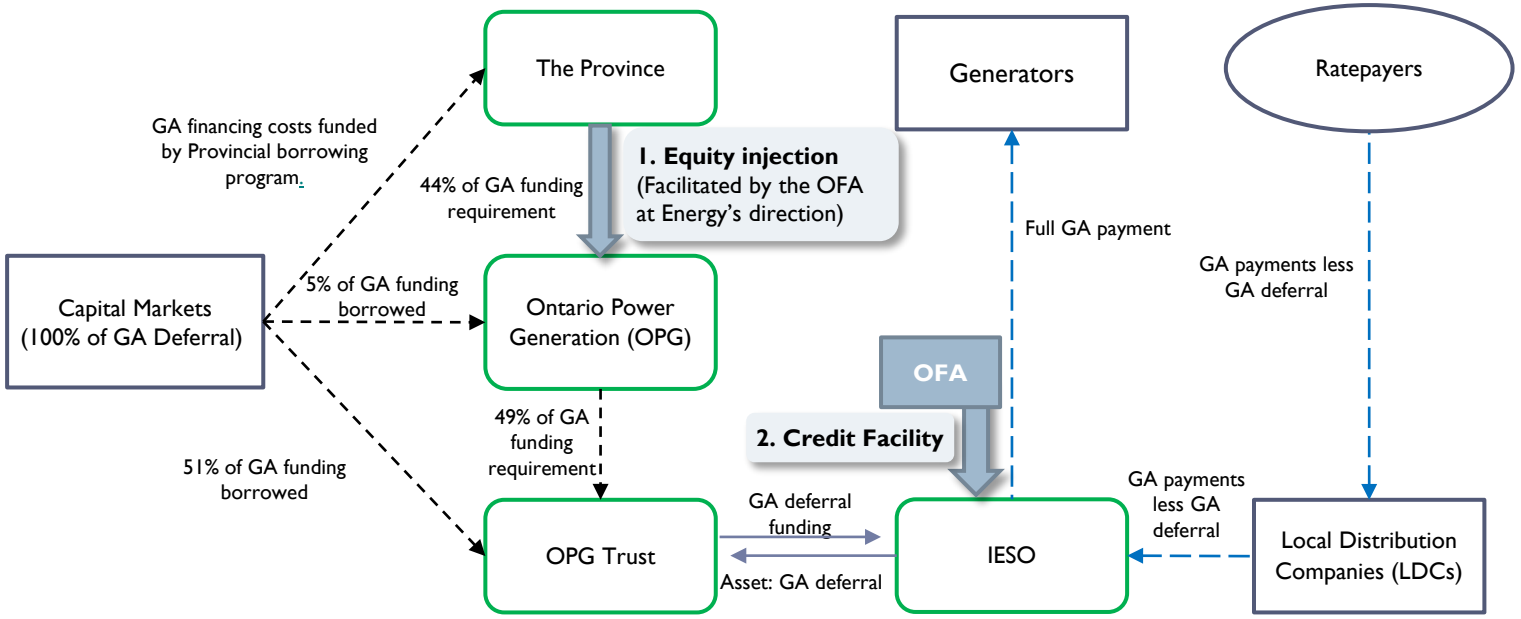
e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

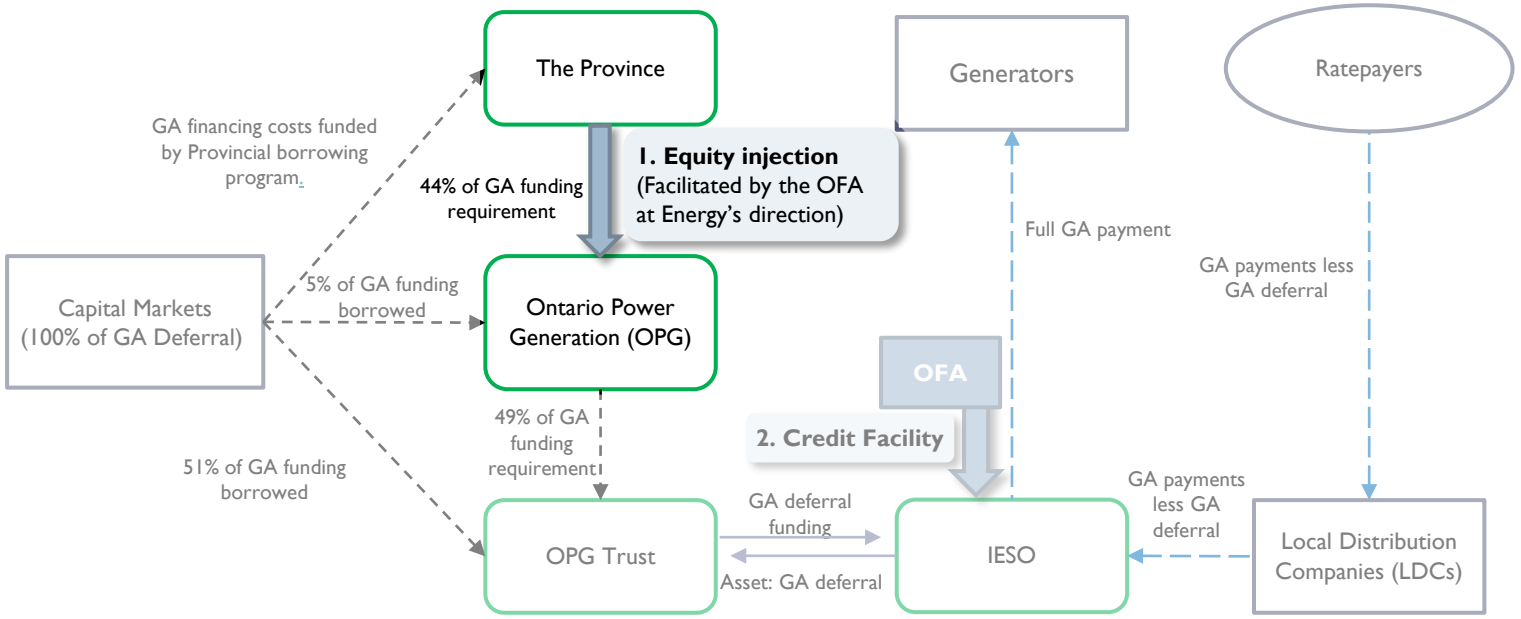
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO
- The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded.



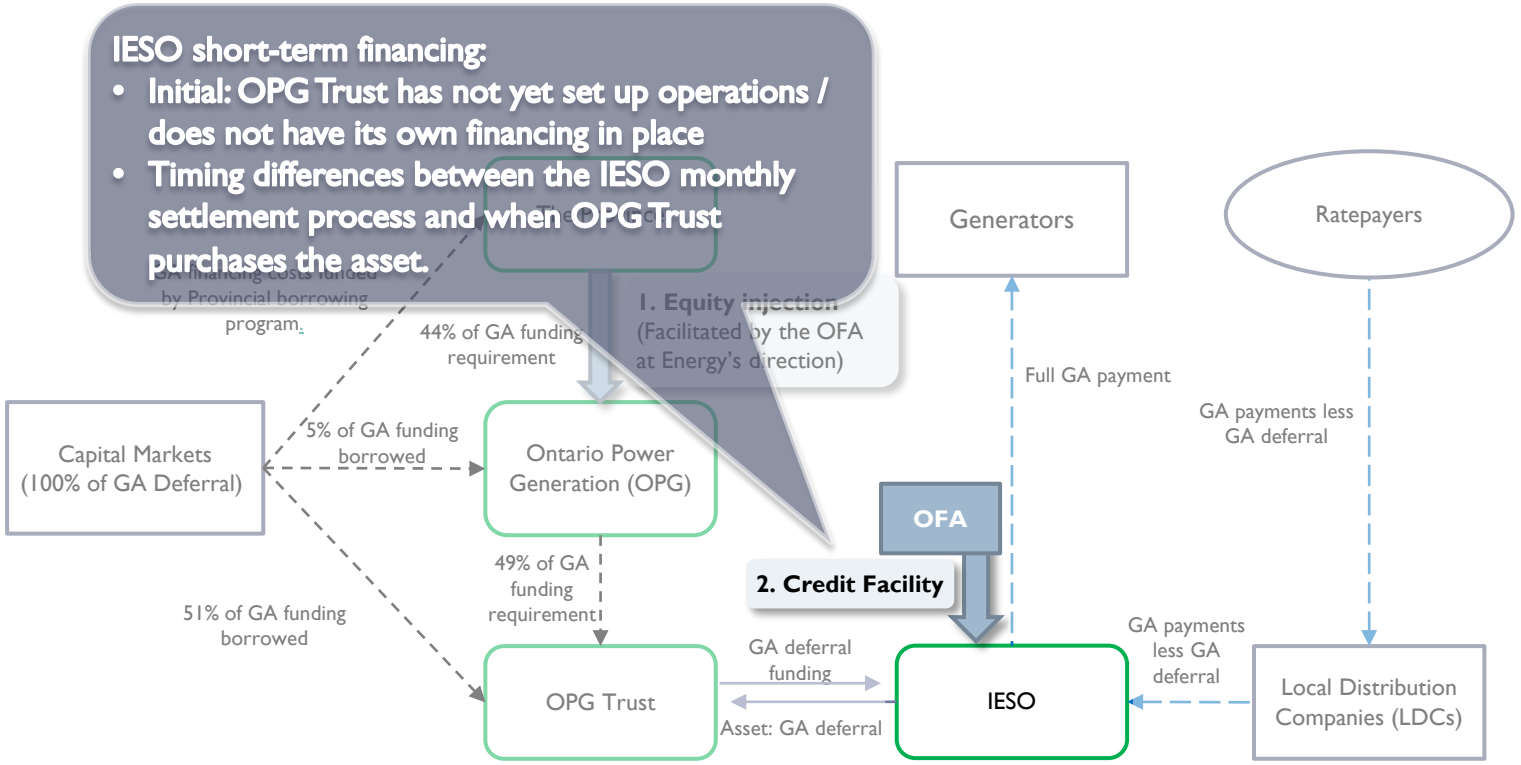
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1B related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which would be
  - offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

DRAFT

GA Financing – Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From:	John Kim
To:	Ronald Kwan
Cc:	Gavin He
Subject:	RE: Action item from the April ARMC / Board meetings
Date:	Tuesday, June 06, 2017 5:58:51 PM

Hi Ron,

We are aiming for a draft to you tomorrow. Hope that is okay with you.

John

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 5:58 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Action item from the April ARMC / Board meetings

Hi,

What`s the status of this presentation?

Ron

From: Gavin He
Sent: May-17-17 18:43
To: Joan Dougherty <Joan.Dougherty@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: Re: Action item from the April ARMC / Board meetings

Hi Joan,

Thanks! Anna reached out to us yesterday too and CEFD is working on preparing the materials for the ARMC meeting in June.

Regards,
Gavin He

On May 17, 2017, at 6:17 PM, Joan Dougherty <Joan.Dougherty@ofina.on.ca> wrote:

> Hi Ron
>
> As a result of discussions at the April ARMC meeting, Bonnie Lysyk suggested that the Board consider obtaining a briefing on the Fair Hydro Plan. Angela Holtham, ARMC

Chair, raised it at the April Board meeting and they agreed that they would benefit from a briefing, preferably, at the June 16th meeting. Please give us your feedback at your earliest convenience.

Regards

Joan Dougherty
Ontario Financing Authority
1 Dundas Street West
12th Floor
Toronto, Ontario, M7A 1Y7
Tel: 416-325-8833
Fax2mail: 416-204-6674
Fax: 416-327-9302

From: Ronald Kwan
To: Gavin He; Bruno Amara; John Kim
Subject: RE: Briefing Deck Copies
Date: Wednesday, June 28, 2017 6:42:43 PM

Thanks Gavin.

Would you or others print a few extra copies of the approvals packages to have at the briefing, and send me the final soft copies too.

Also, would you send the final soft copies to Vivienne for Nancy and Scott N's information.

Ron

From: Gavin He
Sent: June-28-17 18:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Hi all,

Just a quick status update on the items for tomorrow's briefing:

- The attached final version of the briefing deck has been provided to DMO, and I told DMO that CEFD will bring hard copies of the deck.
- Outstanding approval packages:
    1. Minister's Directive for IESO Credit Facility – the package is with DMO. DMO is also getting confirmation on the OIC approval (it should have been signed but they are just waiting for the confirmation).
    2. IESO Treasury Policy – The package has been provided to DMO.
    3. Section 28 approval for OPG and IESO Indemnity Agreements – The package has been provided to DMO.
- Jonathan will forward soft copies of the approval packages to MO. He also noted that we should be prepared to walk the Deputy and the Minister through the approval packages.

Please let me know if you have any questions.

Thanks,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>

Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Thanks Bruno -- 20 copies should be more than enough.

Ron

From: Bruno Amara
Sent: June-28-17 17:44
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Ron

Here is final with draft removed.

I'll bring copies. I don't have invitation, but I'll print 25 copies.

Bruno

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:39 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Briefing Deck Copies

Hi,

Would you be printing and bringing copies of the deck to Frost tomorrow morning?

Would you send me the 'final' version, with 'draft' removed.

Thanks,
Ron

From:	Ronald Kwan
To:	Gavin He
Subject:	RE: Briefing Deck Copies
Date:	Wednesday, June 28, 2017 6:46:25 PM

Thanks Gavin.

Ron

From: Gavin He
Sent: June-28-17 18:44
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Hi Ron,

Sure, I will print out additional copies of the package and will send out the soft copies.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 6:43 PM
To: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Thanks Gavin.

Would you or others print a few extra copies of the approvals packages to have at the briefing, and send me the final soft copies too.

Also, would you send the final soft copies to Vivienne for Nancy and Scott N's information.

Ron

From: Gavin He
Sent: June-28-17 18:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Hi all,

Just a quick status update on the items for tomorrow's briefing:

- The attached final version of the briefing deck has been provided to DMO, and I told DMO that CEFD will bring hard copies of the deck.
- Outstanding approval packages:
    1. Minister's Directive for IESO Credit Facility – the package is with DMO. DMO is also getting confirmation on the OIC approval (it should have been signed but they are just waiting for the confirmation).
    2. IESO Treasury Policy – The package has been provided to DMO.
    3. Section 28 approval for OPG and IESO Indemnity Agreements – The package has been provided to DMO.
- Jonathan will forward soft copies of the approval packages to MO. He also noted that we should be prepared to walk the Deputy and the Minister through the approval packages.

Please let me know if you have any questions.

Thanks,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Thanks Bruno -- 20 copies should be more than enough.

Ron

From: Bruno Amara
Sent: June-28-17 17:44
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Ron

Here is final with draft removed.

I'll bring copies. I don't have invitation, but I'll print 25 copies.

Bruno

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:39 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Briefing Deck Copies

Hi,

Would you be printing and bringing copies of the deck to Frost tomorrow morning?

Would you send me the 'final' version, with 'draft' removed.

Thanks,
Ron

From:	Ken Kandeepan
To:	Ronald Kwan
Cc:	Mike Manning; John Psinas; John Kim
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 5:18:14 PM

Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.

Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony

As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:

- A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
- This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
- Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.
- As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ken Kandeepan
To: Anthony Martinello
Cc: Mike Manning; John Psinas; John Kim; Ronald Kwan
Subject: RE: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 4:55:55 PM

Hi Anthony

As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:

- A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
- This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
- Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.
- As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would

seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	Anthony Martinello
Cc:	Mike Manning; Ken Kandeepan; John Psinas; John Kim
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 1:06:07 PM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup4.docx ATT00001.htm

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

ieso
Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan~~rogram~~**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its inten~~s~~tion to implement the proposed Fair Hydro Plan~~program~~ (FHP) to reduce electricity prices for eligible consumers in the province. Proposed l~~L~~egislation ~~is expected to be~~was introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority~~'s~~ (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's spreading out of global adjustment costs~~smoothing~~ for a period of several months, if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's initial period of deferral of electricity prices, ~~period~~ plus a few months of contingency (i.e., to September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 per cent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- Existing $975 million facility: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and

Commented [A1]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP. And see comment below.

Commented [A2]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility on an interim basis may be exercised if timing does not permit putting in place a new credit facility by the time IESO needs to make a first draw.

Commented [A3]: Overall, would it be better to purely separate out the FHP borrowing – so a larger than $1.5 bn new facility, and potentially shrink the existing $975 facility?

- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is persistent~~consistent~~ usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

To:	Anthony Martinello
Cc:	Mike Manning; Ken Kandeepan; John Psinas; John Kim
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 12:38:24 PM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup4.docx

Hi Anthony,

Staff had a few suggestions/comments.

I think on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one, though drawing on the existing facility might be needed on an interim basis, until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

ieso
Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan~~rogram~~**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its inten~~s~~tion to implement the proposed Fair Hydro Plan~~program~~ (FHP) to reduce electricity prices for eligible consumers in the province. Proposed l~~L~~egislation ~~is expected to be~~was introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority~~'s~~ (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's spreading out of global adjustment costs~~smoothing~~ for a period of several months, if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's initial period of deferral of electricity prices, ~~period~~ plus a few months of contingency (i.e., to September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 per cent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- Existing $975 million facility: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and

Commented [A1]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP. And see comment below.

Commented [A2]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility on an interim basis may be exercised if timing does not permit putting in place a new credit facility by the time IESO needs to make a first draw.

Commented [A3]: Overall, would it be better to purely separate out the FHP borrowing – so a larger than $1.5 bn new facility, and potentially shrink the existing $975 facility?

- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is persistent~~consistent~~ usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	Ronald Kwan
To:	Mike Manning; Ken Kandeepan; John Psinas; John Kim
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 12:38:02 PM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup4.docx

Hi,

Following a call with Mike, I made some edits. I can send this back to Anthony.

Ron

From: Ronald Kwan
Sent: May-11-17 12:21
To: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Mike, Ken,

Did you have comments on the letter? Staff here have made some initial comments. IESO wanted to issue this this week.

I think on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. Does that work for you?

Do the timelines and spread wording work for you?

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH

going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

ieso
Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan~~rogram~~**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its inten~~s~~tion to implement the proposed Fair Hydro Plan~~program~~ (FHP) to reduce electricity prices for eligible consumers in the province. Proposed l~~L~~egislation ~~is expected to be~~was introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority~~'s~~ (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's spreading out of global adjustment costs~~smoothing~~ for a period of several months, if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's initial period of deferral of electricity prices, ~~period~~ plus a few months of contingency (i.e., to September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 per cent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- Existing $975 million facility: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and

Commented [A1]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP. And see comment below.

Commented [A2]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility on an interim basis may be exercised if timing does not permit putting in place a new credit facility by the time IESO needs to make a first draw.

Commented [A3]: Overall, would it be better to purely separate out the FHP borrowing – so a larger than $1.5 bn new facility, and potentially shrink the existing $975 facility?

- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Should the IESO find that there is persistent~~consistent~~ usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	Ronald Kwan
To:	Mike Manning; Ken Kandeepan; John Psinas; John Kim
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 12:20:59 PM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup3.docx

Hi Mike, Ken,

Did you have comments on the letter? Staff here have made some initial comments. IESO wanted to issue this this week.

I think on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. Does that work for you?

Do the timelines and spread wording work for you?

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

ieso
Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan~~rogram~~**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its inten~~s~~tion to implement the proposed Fair Hydro Plan~~program~~ (FHP) to reduce electricity prices for eligible consumers in the province. Proposed l~~L~~egislation ~~is expected to be~~was introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority~~'s~~ (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's spreading out of global adjustment costs~~smoothing~~ for a period of several months, if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's initial period of deferral of electricity prices~~, period~~ plus a few months of contingency (i.e., to September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 per cent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- Existing $975 million facility: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and

Commented [A1]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP.

Commented [A2]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility may be exercised if timing does not permit putting in place a new credit facility.

Commented [A3]: Can CMD provide comments on this? Sufficient?

Commented [A4]: Overall, would it be better to purely separate out the FHP borrowing – so a larger than $1.5 bn new facility, and potentially shrink the existing $975 facility?

Commented [A5]: $975 million agreement is for purposes outlined under section 25.33 of the Electricity Act. Seems FHP would fall under that but legal to confirm. Either way, agreement purpose would need to be amended.

- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Commented [A6]: Subject to OFA Capital Markets.

Should the IESO find that there is persistent~~consistent~~ usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From:	John Kim
To:	Ronald Kwan
Cc:	Deena Padamadan; Bruno Amara; Salman Qadir
Subject:	RE: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 10:25:39 AM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup.docx

Hi Ron,

Pls. see attached.

John

From: John Kim
Sent: May-09-17 18:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Fwd: DRAFT IESO FH credit letter

FYI, just looking at it myself

Begin forwarded message:

> **From:** Sarah Harris <Sarah.Harris@ofina.on.ca>
> **Date:** May 9, 2017 at 4:15:14 PM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, Linda Smith <Linda.Smith@ofina.on.ca>, Opal Kandelas <Opal.Kandelas@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: FW: DRAFT IESO FH credit letter**
>
> Hello John,
>
> I'm not sure if you've seen the attached letter as of yet. We have received this request from IESO to set-up a credit facility for IESO to borrow $1,500M to fund the Fair Hydro Program.
>
> IESO indicates that they either wish to have the existing $975M credit facility between the OFA and IESO increased by $1,500M (incorporating their proposed provisions) or to have a separate $1,500M credit facility altogether. I'm aware that there have some discussions around this. Do you know if it has been decided if OFA or OEFC should provide this facility?
>
> Thanks,
> Sarah

5-8193

From: Opal Kandelas
Sent: Tuesday, May 09, 2017 11:54 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

From: Mike Manning
Sent: Tuesday, May 09, 2017 11:21 AM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

As discussed.
Mike

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 09, 2017 10:26 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged,

confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Program**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intension to implement the Fair Hydro program (FHP) to reduce electricity prices for consumers in the province. Legislation is expected to be introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority's (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's global adjustment smoothing for a period of several months if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's deferral of electricity prices period plus a few months of contingency (i.e. September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 percent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- $975 million: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and
- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Commented [SQ21]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP.

Commented [SQ22]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility may be exercised if timing does not permit putting in place a new credit facility.

Commented [SQ23]: $975 million agreement is for purposes outlined under section 25.33 of the Electricity Act. Seems FHP would fall under that but legal to confirm.

Commented [SQ24]: Subject to OFA Capital Markets.

Should the IESO find that there is consistent usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: Ronald Kwan
To: John Kim
Cc: Deena Padamadan
Subject: RE: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 9:30:41 AM

Hi John,

Where are we on commenting on the draft?

Ron

From: John Kim
Sent: May-09-17 18:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Fwd: DRAFT IESO FH credit letter

FYI, just looking at it myself

Begin forwarded message:

> **From:** Sarah Harris <Sarah.Harris@ofina.on.ca>
> **Date:** May 9, 2017 at 4:15:14 PM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, Linda Smith <Linda.Smith@ofina.on.ca>, Opal Kandelas <Opal.Kandelas@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: FW: DRAFT IESO FH credit letter**
>
> Hello John,
>
> I'm not sure if you've seen the attached letter as of yet. We have received this request from IESO to set-up a credit facility for IESO to borrow $1,500M to fund the Fair Hydro Program.
>
> IESO indicates that they either wish to have the existing $975M credit facility between the OFA and IESO increased by $1,500M (incorporating their proposed provisions) or to have a separate $1,500M credit facility altogether. I'm aware that there have some discussions around this. Do you know if it has been decided if OFA or OEFC should provide this facility?
>
> Thanks,
> Sarah
> 5-8193

From: Opal Kandelas
Sent: Tuesday, May 09, 2017 11:54 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

From: Mike Manning
Sent: Tuesday, May 09, 2017 11:21 AM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

As discussed.
Mike

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 09, 2017 10:26 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not

the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: Ken Kandeepan
Cc: Mike Manning; John Psinas; John Kim
Subject: RE: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 5:23:44 PM

Hi Ken,

Not saying it could not fit into the mandate of OEFC, but I think there may be reasons to keep the FHP separate from OEFC.

And, as the FHP is essentially targeted at the RPP-eligible, and its effectively the lower GA recovery in the RPP prices that IESO has to cover the gap for compared to its market settlement costs with generators, I think there is a good continuity link to having this continue as an OFA facility.

We had this discussion before, and it would have been better to have had this discussion again internally before raising it with the IESO.

Ron

From: Ken Kandeepan
Sent: May-11-17 17:18
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.

Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> - A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
> - This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
> - Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.
> - As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.
>
> Thanks
>
> Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the

named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Deena Padamadan
To: John Kim; Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Thursday, August 24, 2017 12:21:17 PM

Hi John & Ron,

Liz Sandals won't be in Monday so Tuesday is the earliest she would be able to sign. There is a TBS MO meeting Tuesday afternoon so they will try and fit the IESO Credit Facility item in then. DMO mentioned they may ask someone to attend the meeting to explain the item and urgency involved.

Will keep you posted.
Thanks,
Deena

From: John Kim
Sent: Thursday, August 24, 2017 10:56 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

Pls. keep me posted of MO/DMO's decision/approach.

Thanks,

John

From: John Kim
Sent: Wednesday, August 23, 2017 3:53 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Looks good to me.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, August 23, 2017 3:52 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: Delivered package to receptionist

Hi John,

How about this?

Ron

From: John Kim
Sent: August 23, 2017 3:04 PM
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Deena Padamadan
To: John Kim
Cc: Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 9:43:42 AM

Ok - will do.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Deena Padamadan
Cc: Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 9:43:01 AM

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Cc:	Deena Padamadan
Subject:	RE: Delivered package to receptionist
Date:	Thursday, August 24, 2017 10:55:53 AM

Hi Deena,

Pls. keep me posted of MO/DMO's decision/approach.

Thanks,

John

From: John Kim
Sent: Wednesday, August 23, 2017 3:53 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Looks good to me.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, August 23, 2017 3:52 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: Delivered package to receptionist

Hi John,

How about this?

Ron

From: John Kim
Sent: August 23, 2017 3:04 PM
To: Ronald Kwan
Cc: Deena Padamadan

Subject: RE: Delivered package to receptionist

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist
Date: Wednesday, August 23, 2017 3:53:25 PM

Hi Ron,

Looks good to me.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, August 23, 2017 3:52 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: Delivered package to receptionist

Hi John,

How about this?

Ron

From: John Kim
Sent: August 23, 2017 3:04 PM
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist
Date: Wednesday, August 23, 2017 3:04:10 PM
Attachments: BN - IESO Credit Facility Expedite Request.docx

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>

Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

EXPEDITED REQUEST – PRESIDENT OF TREASURY BOARD AS ALTERNATE FOR MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION

The Independent Electricity System Operator (IESO) requests the Ontario Financing Authority (OFA) to execute and put in place the credit facility required for its role under the Ontario Fair Hydro Plan Act, 2017. On June 29, 2017, the Minister of Finance provided a Lending Directive to accommodate IESO's request.

As required by OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt from the requirement to include an intercept provision in the Ontario Fair Hydro Plan (OFHP) Credit Facility agreement, as well as the original credit facility agreement.

STATUS UPDATE

- IESO's treasury and pension staff has raised a significant concern about not having the OFHP credit facility in place by the end of August 2017:
  - A ratings agency, Moody's, has raised their concern that the $2 billion facility has not been put in place.
  - Moody's main concern relates to the rapid utilization of the $975M facility at a rate of about $200-250M per month.
  - Given that the first bond issuance by Financing Entity is not expected until the October timeline, the timely execution of the OFHP credit facility is of a significant concern.
  - The timely execution of the OFHP credit facility is also an important priority of the IESO management and Board of Directors, with the expectation that a credit agreement would be in place by the end of August 2017.

RECOMMENDED NEXT STEP

- Request obtaining the Intercept Exemption Directive from the President of Treasury Board, as alternate for the Minister of Finance.

Corporate and Electricity Finance Division
August 23, 2017

From: John Kim
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist
Date: Wednesday, August 23, 2017 3:01:28 PM
Attachments: BN - IESO Credit Facility Expedite Request.docx

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,

Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

EXPEDITED REQUEST – PRESIDENT OF TREASURY BOARD AS ALTERNATE FOR MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION

The Independent Electricity System Operator (IESO) requests the Ontario Financing Authority (OFA) to execute and put in place the credit facility required for its role under the Ontario Fair Hydro Plan Act, 2017. On June 29, 2017, the Minister of Finance provided a Lending Directive to accommodate IESO's request.

As required by OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt from the requirement to include an intercept provision in the Ontario Fair Hydro Plan (OFHP) Credit Facility agreement, as well as the original credit facility agreement.

STATUS UPDATE

- IESO's treasury and pension staff has raised a significant concern about not having the OFHP credit facility in place by the end of August 2017:
  - A ratings agency, Moody's, has raised their concern that the $2 billion facility has not been put in place.
  - Moody's main concern relates to the rapid utilization of the $975M facility at a rate of about $200-250M per month.
  - Given that the first bond issuance by Financing Entity is not expected until the October timeline, the timely execution of the OFHP credit facility is of a significant concern.

RECOMMENDED NEXT STEP

- Request obtaining the Intercept Exemption Directive from the President of Treasury Board, as alternate for the Minister of Finance.

Corporate and Electricity Finance Division
August 23, 2017

From: Deena Padamadan
To: Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 4:20:38 PM

Hi Ron,

Shall I send the below rationale to DMO?

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 12:36 PM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

It's up to Ron but will aim to provide the rationale. IESO is a rated entity and have ongoing discussions with ratings agencies. They have felt that given the draw on the existing $975M facility (understand more than half way point currently), they are communicating a sense of urgency to put the main FHP facility in place, and to adjust the amount for the $975M (down to $475M).

It would also be to support the IESO in implementing its role under the FHP and do so in a timely way.

I can try to provide additional information but the above rationale sums up my understanding of OFA's interactions with IESO.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Deena Padamadan
Cc: Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 12:36:19 PM

Hi Deena,

It's up to Ron but will aim to provide the rationale. IESO is a rated entity and have ongoing discussions with ratings agencies. They have felt that given the draw on the existing $975M facility (understand more than half way point currently), they are communicating a sense of urgency to put the main FHP facility in place, and to adjust the amount for the $975M (down to $475M).

It would also be to support the IESO in implementing its role under the FHP and do so in a timely way.

I can try to provide additional information but the above rationale sums up my understanding of OFA's interactions with IESO.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with

timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Deena Padamadan
To: John Kim
Cc: Ronald Kwan
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 12:30:03 PM

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Deena Padamadan; John Kim
Subject: RE: Delivered package to receptionist
Date: Tuesday, August 22, 2017 9:57:42 AM

Thanks.
Ron

-----Original Message-----
From: Deena Padamadan
Sent: August-22-17 09:44
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Ok - will do.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Deena Padamadan; John Kim
Subject:	RE: Delivered package to receptionist
Date:	Thursday, August 24, 2017 12:21:54 PM

Thanks Deena.

Ron

From: Deena Padamadan
Sent: August-24-17 12:21
To: John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

Liz Sandals won't be in Monday so Tuesday is the earliest she would be able to sign. There is a TBS MO meeting Tuesday afternoon so they will try and fit the IESO Credit Facility item in then. DMO mentioned they may ask someone to attend the meeting to explain the item and urgency involved.

Will keep you posted.
Thanks,
Deena

From: John Kim
Sent: Thursday, August 24, 2017 10:56 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

Pls. keep me posted of MO/DMO's decision/approach.

Thanks,

John

From: John Kim
Sent: Wednesday, August 23, 2017 3:53 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Looks good to me.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, August 23, 2017 3:52 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: Delivered package to receptionist

Hi John,

How about this?

Ron

From: John Kim
Sent: August 23, 2017 3:04 PM
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?
Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and

may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Gavin He
To:	Brandon Chaput (MOF)
Cc:	Ronald Kwan; Scott Nelms (ENERGY); Brian Lewis (MOL); Montgomery, Kaitlin (MOF); Ghufran Tarin (MOF); Vivienne Skoberne (MOHLTC); Tim Schuurman (MOF); Selena Esmail (MOF); Birks, Ryan (MOF)
Subject:	RE: Draft Materials | Cabinet & Committees Briefing
Date:	Sunday, June 25, 2017 8:49:40 PM
Attachments:	32 20170627 Explainer (CAB) - FHP_CEFD.pptx

Hi Brandon,

Please find attached the edits on slide 8 from CEFD.

Regards,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

Tab 8 | Ontario Fair Hydro Plan Legislative Instruments

For information purposes only, the Cabinet binder includes an overview of various legislative submissions (i.e., an Order in Council and regulations) that would support implementation of the Ontario Fair Hydro Plan.

Ministry Submissions

Approving an Order in Council under the *Capital Investment Plan Act* to **authorize the Minister of Finance to provide the Ontario Financing Authority (OFA) with up to $2.0 billion in additional loans.**

Linkage to the Ontario Fair Hydro Plan

This will allow the OFA to provide a revolving credit facility to the Independent Electricity System Operator (IESO) to help finance short- to medium-term funding shortfalls arising from the Ontario Fair Hydro Plan.

- There is expected to be initial and ongoing IESO cash flow requirement due to timing differences:
  - initially as the expected start up of the OPG financing entity is later in 2017, and
  - monthly due to potential ongoing timing differences in the IESO's monthly settlement process between when it has to pay generators and when the OPG financing entity purchases the asset from IESO.

  As a result, the IESO requires short-term financing to be in place to manage these timing differences.

Impact on Provincial Borrowing and Fiscal Plan

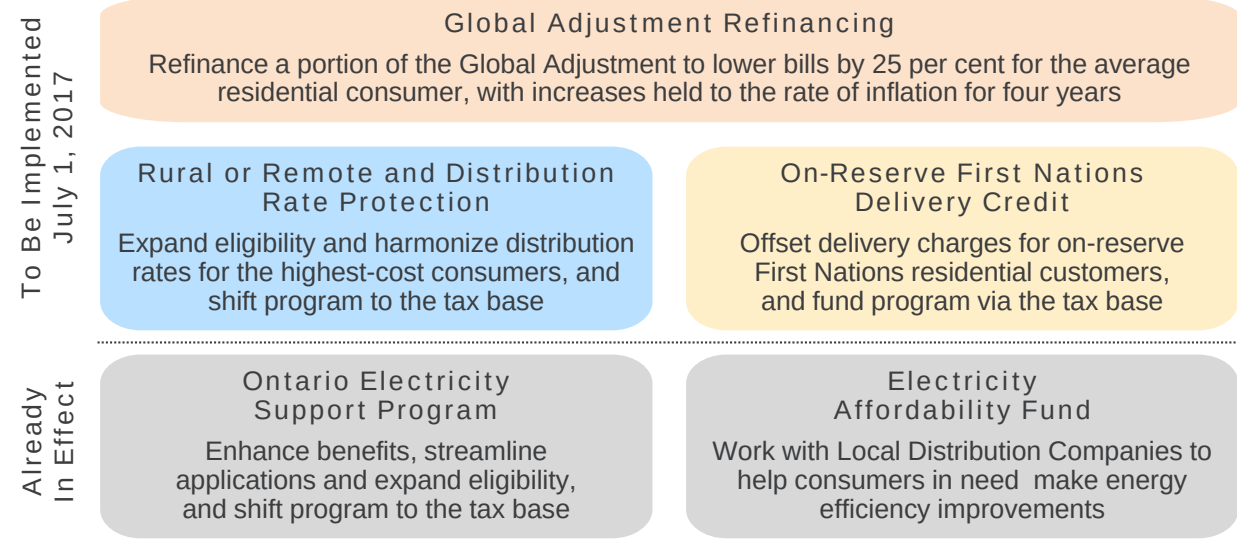
As IESO draws on the credit facility are expected to be short-term and revolving in nature, no increase in long-term provincial borrowing in debt markets is expected, and the OFA loans to IESO ~~and accrued interest~~ are expected to be repaid, with interest, and are not expected to have a fiscal impact.

Other Submissions

Receiving a **report back on the implementation of the Ontario Fair Hydro Plan**, including approval of a new General Regulation and regulatory amendments under the *Fair Hydro Act.*

Overview

Taken together, the new and amended regulations will facilitate the implementation of Global Adjustment refinancing as well as delivery of new or expanded electricity social programs effective July 1, 2017.



Impact on the Fiscal Plan

Elements ($ millions)	2017-18
Rural or Remote Rate Protection and Distribution Rate Protection	344.0
On-Reserve First Nations Delivery Credit	15.0
Fiscal Impact (July 1, 2017 to March 31, 2018)	***359.0***

From: Gavin He
To: Ronald Kwan
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Sunday, June 25, 2017 8:46:08 PM

Hi Ron,

Sure, will do.

Regards,
Gavin He

From: Ronald Kwan
Sent: Sunday, June 25, 2017 8:42 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Draft Materials | Cabinet & Committees Briefing

Hi Gavin,

Yes. Please send to Brandon and the group.

Thanks,
Ron

On Jun 25, 2017, at 5:36 PM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Ron,
>
> Are you good with this version going back to Brandon?
>
> Thanks,
> Gavin He
>
> On Jun 25, 2017, at 4:11 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:
>
> > Right. Thx
> >
> > Sent from my iPhone
> >
> > On Jun 25, 2017, at 2:27 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
> >
> > > Hi,

Just a couple additional tweaks for terminology consistency.

Ron

From: Bruno Amara
Sent: June-25-17 10:37 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: Draft Materials | Cabinet & Committees Briefing

Yes that works. Thanks

Sent from my iPhone

On Jun 25, 2017, at 1:48 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Bruno,
>
> How about this?
>
> Thanks,
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-24-17 10:08 PM
> **To:** Gavin He <Gavin.He@ofina.on.ca>
> **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
>
> Hi Gavin
>
> I have edited the OIC ($2B line of credit) explanation)
>
> Bruno
>
> ---
>
> **From:** Gavin He
> **Sent:** Saturday, June 24, 2017 7:29 PM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource

revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP EFBedit_v2.pptx>

<32 20170627 Explainer (CAB) - FHP EFBedit_v3.pptx>

From: Bruno Amara
To: Gavin He
Cc: Ronald Kwan; John Kim
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Saturday, June 24, 2017 10:07:50 PM
Attachments: 32 20170627 Explainer (CAB) - FHP EFBedit.pptx

Hi Gavin

I have edited the OIC ($2B line of credit) explanation)

Bruno

From: Gavin He
Sent: Saturday, June 24, 2017 7:29 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might

want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

Tab 8 | Ontario Fair Hydro Plan Legislative Instruments

For information purposes only, the Cabinet binder includes an overview of various legislative submissions (i.e., an Order in Council and regulations) that would support implementation of the Ontario Fair Hydro Plan.

Ministry Submissions

Approving an Order in Council under the *Capital Investment Plan Act* to **authorize the Minister of Finance to provide the Ontario Financing Authority with up to $2.0 billion in additional loans.**

Linkage to the Ontario Fair Hydro Plan

This will allow the Authority to provide a revolving credit facility to the Independent Electricity System Operator (IESO) to help finance short- to medium-term funding shortfalls arising from the Ontario Fair Hydro Plan.

The IESO will incur a monthly funding shortfall in the early years of the Ontario fair Hydro Plan, as a portion of the Global Adjustment charge to ratepayers will be deferred. The IESO has the right to recover those deferred amounts (the regulatory asset) from specified consumers in the future 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 and the cash received would be used by the IESO to fund the Global Adjustment shortfall.

There is expected to be initial and ongoing IESO cash flow requirement timing differences due to the expected start up of the OPG SPV later in 2017 and due to potential ongoing timing differences between the IESO's monthly settlement process when it has to pay generators and when the SPV purchases the asset from IESO. As a result, the IESO requires short-term financing to be in place to manage these timing differences.

Impact on Provincial Borrowing and Fiscal Plan

While loans advanced to the IESO will increase provincial borrowing in debt markets, the loans and accrued interest are expected to be repaid and are not expected to have a fiscal impact.

Other Submissions

Receiving a **report back on the implementation of the Ontario Fair Hydro Plan**, including approval of a new General Regulation and regulatory amendments under the *Fair Hydro Act.*

Overview

Taken together, the new and amended regulations will facilitate the implementation of Global Adjustment refinancing as well as delivery of new or expanded electricity social programs effective July 1, 2017.

To Be Implemented July 1, 2017

Global Adjustment Refinancing
Refinance a portion of the Global Adjustment to lower bills by 25 per cent for the average residential consumer, with increases held to the rate of inflation for four years

Rural or Remote and Distribution Rate Protection
Expand eligibility and harmonize distribution rates for the highest-cost consumers, and shift program to the tax base

On-Reserve First Nations Delivery Credit
Offset delivery charges for on-reserve First Nations residential customers, and fund program via the tax base

Already In Effect

Ontario Electricity Support Program
Enhance benefits, streamline applications and expand eligibility, and shift program to the tax base

Electricity Affordability Fund
Work with Local Distribution Companies to help consumers in need make energy efficiency improvements

Impact on the Fiscal Plan

Elements ($ millions)	2017-18
Rural or Remote Rate Protection and Distribution Rate Protection	344.0
On-Reserve First Nations Delivery Credit	15.0
Fiscal Impact (July 1, 2017 to March 31, 2018)	***359.0***

From: Gavin He
To: Bruno Amara
Cc: Ronald Kwan; John Kim
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Saturday, June 24, 2017 7:28:55 PM
Attachments: 32 20170627 Explainer (CAB) - FHP.pptx

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

Tab 8 | Ontario Fair Hydro Plan Legislative Instruments

For information purposes only, the Cabinet binder includes an overview of various legislative submissions (i.e., an Order in Council and regulations) that would support implementation of the Ontario Fair Hydro Plan.

Ministry Submissions

Approving an Order in Council under the *Capital Investment Plan Act* to **authorize the Minister of Finance to provide the Ontario Financing Authority with up to $2.0 billion in additional loans.**

Linkage to the Ontario Fair Hydro Plan

In practice, this will allow the Authority to provide a revolving credit facility to the Independent Electricity System Operator (IESO) to help finance short- to medium-term shortfalls arising from the Ontario Fair Hydro Plan.

Absent a credit facility, deferring a portion of the Global Adjustment charge under the Plan would leave the IESO with insufficient funds to meet its contractual obligations to producers and service providers.

The Ontario Fair Hydro Plan Act gives the IESO the right to recover these deferred amounts from specified consumers in the future, and the ability to sell this “regulatory asset” to a financing entity.

Impact on Provincial Borrowing and Fiscal Plan

While loans advanced to the IESO will increase provincial borrowing in debt markets, the loans and accrued interest are expected to be repaid and are not expected to have a fiscal impact.

Other Submissions

Receiving a **report back on the implementation of the Ontario Fair Hydro Plan**, including approval of a new General Regulation and regulatory amendments under the *Fair Hydro Act.*

Overview

Taken together, the new and amended regulations will facilitate the implementation of Global Adjustment refinancing as well as delivery of new or expanded electricity social programs effective July 1, 2017.

To Be Implemented July 1, 2017

Global Adjustment Refinancing
Refinance a portion of the Global Adjustment to lower bills by 25 per cent for the average residential consumer, with increases held to the rate of inflation for four years

Rural or Remote and Distribution Rate Protection
Expand eligibility and harmonize distribution rates for the highest-cost consumers, and shift program to the tax base

On-Reserve First Nations Delivery Credit
Offset delivery charges for on-reserve First Nations residential customers, and fund program via the tax base

Already In Effect

Ontario Electricity Support Program
Enhance benefits, streamline applications and expand eligibility, and shift program to the tax base

Electricity Affordability Fund
Work with Local Distribution Companies to help consumers in need make energy efficiency improvements

Impact on the Fiscal Plan

Elements ($ millions)	2017-18
Rural or Remote Rate Protection and Distribution Rate Protection	344.0
On-Reserve First Nations Delivery Credit	15.0
Fiscal Impact (July 1, 2017 to March 31, 2018)	***359.0***

From: Gavin He
To: Ronald Kwan
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Saturday, June 24, 2017 7:25:15 PM

Hi Ron,

No he didn't. I will send a copy to him then.

Regards,
Gavin He

From: Ronald Kwan
Sent: Saturday, June 24, 2017 6:53 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Draft Materials | Cabinet & Committees Briefing

Hi Gavin,

Yes please. And did Brandon reach out about our FHP ARMC deck. I had mentioned it to him and he seemed interested in it as background and said he'd ask you about it.

Also, SPFB may want to review the resource revenue sharing slide.

Thanks,
Ron

On Jun 24, 2017, at 6:01 PM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Ron,
>
> Would you like me to extract slide 8 for EFB to review? The other slides are not related to FHP, so I can remove those slides for confidential purposes.
>
> Also, slide 2 talks about "Resource Revenue Sharing", would you like SPFB to take a look at that slide as well?
>
> Thanks,
> Gavin He
>
> ---
>
> **From:** Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
> **Sent:** Saturday, June 24, 2017 5:53 PM
> **To:** Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>

Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

From: Gavin He
To: Ronald Kwan
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Saturday, June 24, 2017 6:01:29 PM

Hi Ron,

Would you like me to extract slide 8 for EFB to review? The other slides are not related to FHP, so I can remove those slides for confidential purposes.

Also, slide 2 talks about "Resource Revenue Sharing", would you like SPFB to take a look at that slide as well?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

From: Chaput, Brandon (MOF)
To: Ronald Kwan
Subject: RE: Draft Materials | Cabinet & Committees Briefing
Date: Monday, June 26, 2017 8:27:09 AM

Teamwork!
Enjoy your tour

--
Brandon Chaput | 416.562.4958

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-26-17 8:18 AM
To: Chaput, Brandon (MOF)
Cc: He, Gavin (OFA)
Subject: Re: Draft Materials | Cabinet & Committees Briefing

Hi Brandon,

Thanks for pulling together another good slide on the FHP.

Ron

On Jun 26, 2017, at 7:45 AM, Chaput, Brandon (MOF) <Brandon.Chaput@ontario.ca> wrote:

> This version merges your comments with some of the original context from my version – hopefully it's okay, the language should be from your LRC approval form.
>
> --
> Brandon Chaput | 416.562.4958
>
> ---
>
> **From:** Gavin He [mailto:Gavin.He@ofina.on.ca]
> **Sent:** June-25-17 8:50 PM
> **To:** Chaput, Brandon (MOF)
> **Cc:** Kwan, Ronald (OFA); Nelms, Scott (MOF); Lewis, Brian (MOF); Montgomery, Kaitlin (MOF); Tarin, Ghufran (MOF); Skoberne, Vivienne (MOF); Schuurman, Tim (MOF); Esmail, Selena (MOF); Birks, Ryan (MOF)
> **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
>
> Hi Brandon,
>
> Please find attached the edits on slide 8 from CEFD.
>
> Regards,
> Gavin He
>
> ---
>
> **From:** Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]

Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<32 20170627 Explainer (CAB).pptx>

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 5:53:01 PM

Hi,

How about this?

- CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

- In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

- CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

- MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

- CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)

Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Nelms, Scott (MOF)
To: Ronald Kwan
Subject: RE: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 6:03:18 PM

Sounds good to me. Thanks Ron.

Sent with BlackBerry Work
(www.blackberry.com)

From: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Date: Wednesday, Jun 14, 2017, 6:01 PM
To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: FW: Draft bullets re s28 timin Pls see below for changes.

Hi Scott,

How about the following?

Ron

· CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

· In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

· CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

· MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

· CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is

delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca<mailto:carys.baker@ontario.ca>

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I’m in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 5:30:23 PM

Hi,

Has that been added to the response back to Marianne yet, and is Legal aware and okay working within that timeline?

Ron

From: John Kim
Sent: June-14-17 14:17
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Agreed. I'd like to suggest end of this week in order to meet the end of the month timeline.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 2:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

I think we should then say by when we need responses / information back from Energy in order to meet an end of June timeframe to bring this forward to the Minister of Finance for consideration – recognising that we would have liked to have the signed submission weeks ago (and they might say they stated the process with TBS a month ago, or more).

Ron

From: John Kim
Sent: June-14-17 13:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around

approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara
Subject:	RE: Draft bullets re s28 timin
Date:	Wednesday, June 14, 2017 2:16:59 PM

Agreed. I'd like to suggest end of this week in order to meet the end of the month timeline.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 2:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

I think we should then say by when we need responses / information back from Energy in order to meet an end of June timeframe to bring this forward to the Minister of Finance for consideration – recognising that we would have liked to have the signed submission weeks ago (and they might say they stated the process with TBS a month ago, or more).

Ron

From: John Kim
Sent: June-14-17 13:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal

noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)

Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 2:11:43 PM

Hi John,

I think we should then say by when we need responses / information back from Energy in order to meet an end of June timeframe to bring this forward to the Minister of Finance for consideration – recognising that we would have liked to have the signed submission weeks ago (and they might say they stated the process with TBS a month ago, or more).

Ron

From: John Kim
Sent: June-14-17 13:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)

Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 1:55:55 PM

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan

Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM

To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 1:53:30 PM

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35

To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: RE: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 1:51:08 PM

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky

416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim
Cc:	Bruno Amara
Subject:	RE: Draft bullets re s28 timin
Date:	Wednesday, June 14, 2017 1:11:53 PM
Attachments:	DRAFT s28 Bullets_Markup3.docx

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>

Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT

There are a number of outstanding business issues and requests for information outstanding related to the planned Ministry of Energy's (Energy) Section 28 request under Ontario's Fair Hydro Plan (OFHP) that are under discussion between the Ministry of Finance (Finance) Legal staff and Energy Legal staff.

At this point, a signed submission package has not been received and Energy will need to share draft indemnity agreements with the IESO and OPG for comments prior to finalizing. The discussion MOF and Energy Legal staff have had thus far aims to arrive at a draft agreement acceptable to both side [prior to sharing with the IESO and OPG].

Commented [RK1]: Is this fair to add?

Subject to receiving a complete, signed submission package, including revised draft materials to respond to queries from MOF Legal and OFA staff (see below), the submission will be reviewed, with a target for bringing it forward for the Minister of Finance's consideration in late June.

Main outstanding issues / information requests include the following:

1. MOF Legal / OFA staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations. [Note that Energy's draft business case puts the estimated exposure as unquantifiable.]

~~1.~~2. MOF Legal / OFA staff are looking for Energy to include in its business case more on concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable and for which indemnities are required.

   a. Most of the examples provided or discussed are financing related activities. Are there other types of activities?

   b. What are the ~~M~~most likely entities/organizations to sue OPG/IESO and members listed above.

   c. What are the situations where someone who might not be acting in good faith, as determined by a Court, and still warrant being covered under the indemnity? [Some wording in the draft materials have raised concerns among MOF staff.]

      i. Electricity Act, 1998 already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith.

      ii. The Ontario Fair Hydro Plan Act, 2017 does provide similar protection for OPG.

~~2.~~3. OPG and IESO's corporate mandates will be updated to reflect their participation and role in OFHP. Given that OFHP activities will be reflected in such corporate

documents, Energy's submission needs to include narrative on why the indemnities are required especially around the "acting in good faith" issue and where it is argued that the IESO and OPG's participation in OFHP is outside of their (pre-OFHP) "usual" or "typical" corporate responsibilities.

~~3.~~4. As currently proposed, indemnities are to be exactly the same for the IESO and OPG. Should the indemnities be tailored to specific circumstances of the IESO and OPG?

~~4.~~5. Are there any other arrangements, e.g., insurance policies that the IESO and OPG have, that cover these risks?

a. MOF Legal staff are looking for any other examples of indemnities provided by the IESO and OPG on behalf of members listed above that would be called upon first before the indemnities are called.

~~b.~~

Formatted: Indent: Left: 1.03", No bullets or numbering

~~5.~~6. MOF Legal / OFA staff have requested consistency on some areas of discrepancy between the draft materials~~,~~; i.e., between the business case and the contingent liability table.

~~6.1. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations.~~

From:	John Kim
To:	Ronald Kwan
Cc:	Bruno Amara
Subject:	RE: Draft bullets re s28 timin
Date:	Wednesday, June 14, 2017 1:07:20 PM
Attachments:	DRAFT s28 Bullets_Markup2.docx

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT

There are a number of outstanding business issues and requests for information outstanding related to the planned Ministry of Energy's (Energy) Section 28 request under Ontario's Fair Hydro Plan (OFHP) that are under discussion between the Ministry of Finance (Finance) staff and Energy staff.

At this point, a signed submission package has not been received and Energy will need to share draft indemnity agreements with the IESO and OPG for comments prior to finalizing. The discussion MOF and Energy staff have had thus far aims to arrive at a draft agreement acceptable to both side [prior to sharing with the IESO and OPG].

Commented [RK1]: Is this fair to add?

Subject to receiving a complete, signed submission package, including revised draft materials to respond to queries from MOF Legal and OFA staff (see below), the submission will be reviewed, with a target for bringing it forward for the Minister of Finance's consideration in late June.

Main outstanding issues / information requests include the following:

1. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations. [Note that Energy's draft business case puts the estimated exposure as unquantifible.]

~~1.~~2. MOF staff are looking for Energy to include in its business case more on concerns/scenarios for which OPG/IESO or its directors, officers and employees ~~-~~may become liable and for which indemnities are required.

   a. Most of the examples provided or discussed are financing related activities. Are there other types of activities?

   b. What are the ~~M~~most likely entities/organizations to sue OPG/IESO and members listed above.

   c. What are the situations where someone who might not be acting in good faith, as determined by a Court, and still warrant being covered under the indemnity? [Some wording in the draft materials have raised concerns among MOF staff.]

      i. Electricity Act, 1998 already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith.

      ii. The Ontario Fair Hydro Plan Act, 2017 does provide similar protection for OPG.

~~2.~~3. OPG and IESO's corporate mandates will be updated to reflect their participation and role in OFHP. Given that OFHP activities will be reflected in such corporate

documents, Energy's submission needs to include narrative on why the indemnities are required especially around the "acting in good faith" issue and where it is argued that the IESO and OPG's participation in OFHP is outside of their (pre-OFHP) "usual" or "typical" corporate responsibilities.

~~3.~~4. As currently proposed, indemnities are to be exactly the same for the IESO and OPG. Should the indemnities be tailored to specific circumstances of the IESO and OPG?

~~4.~~5. Are there any other arrangements, e.g., insurance policies that the IESO and OPG have, that cover these risks?

a. MOF staff are looking for any other examples of indemnities provided by the IESO and OPG on behalf of members listed above that would be called upon first before the indemnities are called.

~~b.~~

Formatted: Indent: Left: 1.03", No bullets or numbering

~~5.~~6. MOF staff have requested consistency on some areas of discrepancy between the draft materials~~,~~; i.e., between the business case and the contingent liability table.

~~6.1. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations.~~

From:	Ronald Kwan
To:	John Kim
Cc:	Bruno Amara
Subject:	RE: Draft bullets re s28 timin
Date:	Wednesday, June 14, 2017 12:45:05 PM
Attachments:	DRAFT s28 Bullets_Markup.docx

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal

noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)

Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT

There are a number of outstanding business issues and requests for information outstanding related to the planned Ministry of Energy's (Energy) Section 28 request under Ontario's Fair Hydro Plan (OFHP) that are under discussion between the Ministry of Finance (Finance) staff and Energy staff.

At this point, a signed submission package has not been received.

Commented [RK1]: Is this fair to add?

Subject to receiving a complete, signed submission package, including revised draft materials to respond to queries from MOF Legal and OFA staff (see below), the submission will be reviewed, with a target for bringing it forward for the Minister of Finance's consideration in late June.

Main outstanding issues / information requests include the following:

1. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations. [Note that Energy's draft business case puts the estimated exposure as unquantifible.]

~~1.~~2. MOF staff are looking for Energy to include in its business case more on concerns/scenarios for which OPG/IESO or its directors, officers and employees ~~-~~may become liable and for which indemnities are required.

   a. Most of the examples provided or discussed are financing related activities. Are there other types of activities?

   b. What are the ~~M~~most likely entities/organizations to sue OPG/IESO and members listed above.

   c. What are the situations where someone who might not be acting in good faith, as determined by a Court, and still warrant being covered under the indemnity? [Some wording in the draft materials have raised concerns among MOF staff.]

      i. Electricity Act, 1998 already protects IESO's directors, officers, employees or agents against civil proceedings if they act in good faith.

      ii. The Ontario Fair Hydro Plan Act, 2017 does provide similar protection for OPG.

~~2.~~3. OPG and IESO's corporate mandates will be updated to reflect their participation and role in OFHP. Given that OFHP activities will be reflected in such corporate documents, Energy's submission needs to include narrative on why the indemnities are required especially around the "acting in good faith" issue and where it is argued that

the IESO and OPG's participation in OFHP is outside of their (pre-OFHP) "usual" or "typical" corporate responsibilities.

~~3.~~4. As currently proposed, indemnities are to be exactly the same for the IESO and OPG. Should the indemnities be tailored to specific circumstances of the IESO and OPG?

~~4.~~5. Are there any other arrangements, e.g.~~,~~ insurance policies that the IESO and OPG have, that cover these risks?

a. MOF staff are looking for any other examples of indemnities provided by the IESO and OPG on behalf of members listed above that would be called upon first before the indemnities are called.

~~b.~~

Formatted: Indent: Left: 1.03", No bullets or numbering

~~5.~~6. MOF staff have requested consistency on some areas of discrepancy between the draft materials~~,~~; i.e.~~,~~ between the business case and the contingent liability table.

~~6.1. MOF staff have requested clarity in Energy's communication that any payments under the indemnities would be made from Energy's allocations.~~

From:	Ronald Kwan
To:	John Kim
Cc:	Bruno Amara
Subject:	RE: Draft bullets re s28 timin
Date:	Wednesday, June 14, 2017 6:01:46 PM

Thanks John.

Ron

From: John Kim
Sent: June-14-17 18:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Re: Draft bullets re s28 timin

We can check with legal in the timing. I think if energy delivers our part is very straight forward but can check

On Jun 14, 2017, at 5:30 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> Has that been added to the response back to Marianne yet, and is Legal aware and okay working within that timeline?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** June-14-17 14:17
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** RE: Draft bullets re s28 timin
>
> Agreed. I'd like to suggest end of this week in order to meet the end of the month timeline.
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Wednesday, June 14, 2017 2:12 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** RE: Draft bullets re s28 timin
>
> Hi John,
>
> I think we should then say by when we need responses / information back from Energy

in order to meet an end of June timeframe to bring this forward to the Minister of Finance for consideration – recognising that we would have liked to have the signed submission weeks ago (and they might say they stated the process with TBS a month ago, or more).

Ron

From: John Kim
Sent: June-14-17 13:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,

Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky

416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Gadi Mayman; Ken Kandeepan; Mike Manning
Cc:	Anna Strathy
Subject:	RE: FHP Note -- CFS (DRAFT)
Date:	Wednesday, September 05, 2018 6:28:28 PM
Attachments:	FHP Note -- CFS (DRAFT)_Markup.docx

Hi Gadi,

I took a quick look and had a few suggestions/comments.

Ron

From: Gadi Mayman
Sent: September-05-18 17:42
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: FHP Note -- CFS (DRAFT)

Any comments? It looks reasonable to me at first glance.

Gadi

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Sent: Wednesday, September 5, 2018 3:57 PM
To: Tim Schuurman (MOF); Brandon Chaput (MOF); Gadi Mayman
Subject: FW: FHP Note -- CFS (DRAFT)

Draft note disclosure for CFS

From: Donaldson, Mark (TBS)
Sent: September 5, 2018 2:05 PM
To: Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>
Cc: Laughton, Patrick (TBS) <Patrick.Laughton@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Note -- CFS (DRAFT)

Hi Steen – per our conference call earlier today, this is our draft note disclosure on the GA refinancing.

Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. The Ontario Rebate for Electricity Consumers~~A rebate~~ (OREC) in the amount equivalent to the~~of~~ 8% provincial portion of the Harmonised Sales Tax (HST) ~~of~~on electricity bills ~~for~~of eligible residential, small business and farm consumers, commencing January 2017, funded by the ~~tax base~~government;
2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the ~~tax base~~government;
3. Reductions, existing and expanded for certain rural electricity consumers, funded by the ~~tax base~~government instead of the rate base;
4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the ~~tax base~~government;
5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the ~~tax base~~government; and
6. An additional reduction in current electricity bills for eligible residential, small business and farm customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25% for residential customers (with differential benefits for other eligible customers), which, unlike items 1 to 5 above, was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the ~~tax base~~government– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the cost ~~amount~~ of the current electricity price reduction to be borne by future ratepayers, and by making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

Commented [RK1]: "tax base" seems an internal colloquialism, not an official publication, vs being funded by general government (or "provincial") revenues (current or future, if borrowed for now).

Commented [RK2]: Is this part being Minuted now? Is this what ENDM is to return and report back on? Does / could this be reworded to reflect that this refers to reducing the cost, by having it be government borrowing?

Commented [RK3]: Is this in the other or revised Minute? Can we review that Minute too?

DRAFT

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.
- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

Commented [RK4]: The term used elsewhere seemed to be "investment asset" – or is that legislative "jargon" vs accounting jargon – with the latter using "intangible asset"?

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

DRAFT

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

As a result of the decision made on September 12, 2018, the government expects that ~~the~~ one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – ~~8% rebate~~OREC	~~Tax base~~Government	$810	NIL
2 – OESP	Government~~Tax base~~	$20	NIL
3 – Rural rate reduction	Government~~Tax base~~	$325	NIL
4 – First Nations delivery credit	Government~~Tax base~~	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Government~~Tax base~~	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Commented [RK5]: Seems low – is this just the incremental amount? Or does this reflect that the prior ratepayer "surplus" recovery in OESP had to be worked off first, so only a very small amount was government-funded in 17-18?

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From:	John Kim
To:	"McKinlay, Tom (ENERGY)"
Cc:	Hilary Cox (ENE); Steen Hume (CAB); Ronald Kwan
Subject:	RE: FHP
Date:	Wednesday, September 20, 2017 4:54:57 PM

Hi Tom,

I understand you reached out to MOF Legal today.

Would you be available for a quick call tomorrow with me and OFA Legal staff. Pls. let me know of your availability.

This morning, I touched base with IESO staff on the proposed path forward and focused on the rationale for the approach. I did not sense a push back from them on the call but I can understand their desire to put a facility in place as soon as possible.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, September 19, 2017 6:41 PM
To: Steen Hume (CAB) <Steen.Hume@ontario.ca>
Cc: 'McKinlay, Tom (ENERGY)' <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: FHP

Hi Steen,

As discussed, a background note on the OFA-IESO credit facility and the intercept provision requirement.

Ron

From: Ronald Kwan
Sent: September-19-17 13:18
To: Steen Hume (CAB) <Steen.Hume@ontario.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Nelms, Scott (MOF)
To: Ronald Kwan
Subject: RE: FHP
Date: Friday, June 09, 2017 10:05:13 AM

Good idea. Perhaps we can look at something in the later part of June so we can bring all of the various business items to his attention and get sign off on relevant pieces at the same time. Does that make sense?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 9, 2017 10:02 AM
To: Nelms, Scott (MOF)
Subject: FHP

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Steen Hume (CAB)
Cc:	"McKinlay, Tom (ENERGY)"; Hilary Cox (ENE); John Kim
Subject:	RE: FHP
Date:	Tuesday, September 19, 2017 6:40:57 PM
Attachments:	IESO-OFA - FHP LoC - Intercept_Sep19-2017.docx

Hi Steen,

As discussed, a background note on the OFA-IESO credit facility and the intercept provision requirement.

Ron

From: Ronald Kwan
Sent: September-19-17 13:18
To: Steen Hume (CAB) <Steen.Hume@ontario.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

BACKGROUND NOTE
OFA -- IESO CREDIT FACILITY & THE INTERCEPT PROVISION REQUIRED UNDER THE OFA'S LENDING POLICY

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet].

In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the 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 to the OFA under a loan agreement.

Per the requirements of the OFA's Lending Policy, the OFA has reached out to the Ministry of Energy and IESO to fulfill the requirement to include an intercept provision in credit facility agreements with the IESO.

- The OFA Lending Policy, as approved by the OFA Board, provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following intercept provision requirement:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

- The new FHP credit facility, with the required intercept clause, will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility) which will also require the intercept clause to be added.

- Including an intercept provision in the credit facility agreements with the IESO is expected to have no practical impact as the IESO receives no appropriations from the Province of Ontario [Energy to confirm], but would bring the lending facilities onside with the requirements of the OFA Lending Policy and be consistent with CIPA.

Electricity Finance Branch / Corporate and Electricity Finance Division / Ontario Financing Authority
September 19, 2017

From: John Kim
To: Ronald Kwan
Subject: RE: FHP
Date: Tuesday, September 19, 2017 3:16:11 PM

Hi Ron,

I'm reluctant to connect Tom to our Legal just yet…..I proposed to our Legal staff that we should draft the letter agreement and make that connection to Energy Legal together with the BN that I told that I was modifying.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, September 19, 2017 1:18 PM
To: Steen Hume (CAB) <Steen.Hume@ontario.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM

To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Steen Hume (CAB)
Cc:	McKinlay, Tom (ENERGY); Hilary Cox (ENE); John Kim
Subject:	RE: FHP
Date:	Tuesday, September 19, 2017 1:17:43 PM

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Hume, Steen (ENERGY)
To:	Ronald Kwan
Cc:	McKinlay, Tom (ENERGY); Hilary Cox (ENE)
Subject:	RE: FHP
Date:	Tuesday, September 19, 2017 1:07:01 PM

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Hume, Steen (ENERGY)
To: Ronald Kwan
Cc: Hilary Cox (ENE)
Subject: RE: FHP
Date: Tuesday, September 19, 2017 12:08:27 PM

Hi Ron. Why don't you give me a call now if you can?

Thanks,

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: RE: FHP
Date: Sunday, June 11, 2017 2:17:15 PM

Hi Scott,

End of the month on the indemnities seems doable.

If we can do the signing of the OIC LRC submission, that would work on that point too.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-11-17 1:59 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: FHP

I hear we both spoke with Marianne on Friday. I suggested that end of the month for indemnities should work (hopefully that is ok for you). Let me know if everything sequences up as you hope below and we can coordinate some sort of broad update.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-09-17 10:23 AM
To: Nelms, Scott (MOF)
Subject: RE: FHP

Hi Scott,

Good idea on the briefing.

Timing depends on a couple things. I was a little surprised on the MO request for a briefing on the credit facility, as it's quite straightforward, but that submission needs to be signed by Thursday (CO has the ADM-approved version, but we need a DM and Minister signed version for LRC). If we can get Marianne comfortable with just doing that through a Minister's signing meeting, that would provide more timing flexibility.

Timing could also depend on when the indemnity is actually needed too.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-09-17 10:05 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: FHP

Good idea. Perhaps we can look at something in the later part of June so we can bring all of the various business items to his attention and get sign off on relevant pieces at the same time. Does that make sense?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 9, 2017 10:02 AM
To: Nelms, Scott (MOF)
Subject: FHP

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Nelms, Scott (MOF)
To: Ronald Kwan
Subject: RE: FHP
Date: Sunday, June 11, 2017 1:59:32 PM

I hear we both spoke with Marianne on Friday. I suggested that end of the month for indemnities should work (hopefully that is ok for you). Let me know if everything sequences up as you hope below and we can coordinate some sort of broad update.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-09-17 10:23 AM
To: Nelms, Scott (MOF)
Subject: RE: FHP

Hi Scott,

Good idea on the briefing.

Timing depends on a couple things. I was a little surprised on the MO request for a briefing on the credit facility, as it's quite straightforward, but that submission needs to be signed by Thursday (CO has the ADM-approved version, but we need a DM and Minister signed version for LRC). If we can get Marianne comfortable with just doing that through a Minister's signing meeting, that would provide more timing flexibility.

Timing could also depend on when the indemnity is actually needed too.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-09-17 10:05 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: FHP

Good idea. Perhaps we can look at something in the later part of June so we can bring all of the various business items to his attention and get sign off on relevant pieces at the same time. Does that make sense?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 9, 2017 10:02 AM
To: Nelms, Scott (MOF)
Subject: FHP

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: RE: FHP
Date: Friday, June 09, 2017 10:22:50 AM

Hi Scott,

Good idea on the briefing.

Timing depends on a couple things. I was a little surprised on the MO request for a briefing on the credit facility, as it's quite straightforward, but that submission needs to be signed by Thursday (CO has the ADM-approved version, but we need a DM and Minister signed version for LRC). If we can get Marianne comfortable with just doing that through a Minister's signing meeting, that would provide more timing flexibility.

Timing could also depend on when the indemnity is actually needed too.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-09-17 10:05 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: FHP

Good idea. Perhaps we can look at something in the later part of June so we can bring all of the various business items to his attention and get sign off on relevant pieces at the same time. Does that make sense?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 9, 2017 10:02 AM
To: Nelms, Scott (MOF)
Subject: FHP

Hi Scott,

Were you planning on doing a FHP status update briefing for the Minister? Any targeted timing?

We've been asked to do a briefing on the OIC to enable OFA to have enough borrowing room for the IESO credit facility request. And, at some point, we will need to brief on the indemnity request -- and on the Provincial guarantee too.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended

recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Steen Hume (CAB)
Cc:	"McKinlay, Tom (ENERGY)"; Hilary Cox (ENE); John Kim
Subject:	RE: FHP
Date:	Thursday, October 05, 2017 12:46:04 PM

Hi Steen,

I just wanted to check in with you on this and any questions or issues you may have at your end.

As you may recall, IESO asked to loop in OPG on this as well for their information and feedback. I understand from staff that IESO has not yet heard back from OPG on this. Would you have insights on any concerns OPG might have, timing of a review/response, or any timing issues or concerns arising out of OPG's discussions with IESO on their services agreement?

Thanks,
Ron

From: Ronald Kwan
Sent: September-19-17 13:18
To: Steen Hume (CAB) <Steen.Hume@ontario.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Subject: RE: FHT - Asset Purchase from IESO
Date: Monday, June 11, 2018 10:47:48 AM

Hi John,

Have a minute?

Ron

From: John Kim
Sent: June-11-18 10:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: FHT - Asset Purchase from IESO

FYI

Sent from my iPad

Begin forwarded message:

> **From:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Date:** June 11, 2018 at 9:55:36 AM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Subject: FW: FHT - Asset Purchase from IESO**
>
> Hi John
>
> See below. Let me know when you have a minute.
>
> Thx
> Bruno
>
> ---
>
> **From:** Carlos Yep
> **Sent:** Monday, June 11, 2018 9:54 AM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** FW: FHT - Asset Purchase from IESO
>
> FYI
>
> ---
>
> **From:** Mike Manning
> **Sent:** Sunday, June 10, 2018 8:57 AM
> **To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** Fwd: FHT - Asset Purchase from IESO

Not sure why they are asking about this, have never been asked about the financing before. As I'm away can you please get back to them.
Regards, Mike

Begin forwarded message:

> **From:** LADAK Lubna -TREASURY <lubna.ladak@opg.com>
> **Date:** June 8, 2018 at 5:21:10 PM EDT
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject: FHT - Asset Purchase from IESO**
>
> Hello Mike,
> We received a notice from the IESO this afternoon to purchase the current balance of $566 Million in their deferral account. This covers the months of April and May. I wanted to touch base with you before drawing on our warehouse facility to confirm you're able to provide financing for this purchase. Please let me know via email or give me a call. Thanks.
>
> Have a good weekend.
>
> **Lubna Ladak | VP Treasury - FHP| Ontario Power Generation**
> 700 University Avenue, Toronto, Ontario M5G 1X6 | 416-592-5984 | Cell 416-578-0219 | Fax 416-592-4189
> lubna.ladak@opg.com

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

From: Ronald Kwan
To: John Kim
Subject: RE: FHT - Asset Purchase from IESO
Date: Monday, June 11, 2018 12:57:16 PM

Hi John,

What is the outstanding balance on the IESO credit facility from the OFA?

Thanks,
Ron

From: John Kim
Sent: June-11-18 10:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: FHT - Asset Purchase from IESO

FYI

Sent from my iPad

Begin forwarded message:

> **From:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Date:** June 11, 2018 at 9:55:36 AM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Subject: FW: FHT - Asset Purchase from IESO**
>
> Hi John
>
> See below. Let me know when you have a minute.
>
> Thx
> Bruno
>
> ---
>
> **From:** Carlos Yep
> **Sent:** Monday, June 11, 2018 9:54 AM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** FW: FHT - Asset Purchase from IESO
>
> FYI
>
> ---
>
> **From:** Mike Manning
> **Sent:** Sunday, June 10, 2018 8:57 AM
> **To:** James Devine <James.Devine@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>
> **Subject:** Fwd: FHT - Asset Purchase from IESO

Not sure why they are asking about this, have never been asked about the financing before. As I'm away can you please get back to them.
Regards, Mike

Begin forwarded message:

> **From:** LADAK Lubna -TREASURY <lubna.ladak@opg.com>
> **Date:** June 8, 2018 at 5:21:10 PM EDT
> **To:** Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject: FHT - Asset Purchase from IESO**
>
> Hello Mike,
> We received a notice from the IESO this afternoon to purchase the current balance of $566 Million in their deferral account. This covers the months of April and May. I wanted to touch base with you before drawing on our warehouse facility to confirm you're able to provide financing for this purchase. Please let me know via email or give me a call. Thanks.
>
> Have a good weekend.
>
> **Lubna Ladak | VP Treasury - FHP| Ontario Power Generation**
> 700 University Avenue, Toronto, Ontario M5G 1X6 | 416-592-5984 | Cell 416-578-0219 | Fax 416-592-4189
> lubna.ladak@opg.com

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

From: John Kim
To: Ronald Kwan
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:15:14 PM

Hi Ron,

Are you thinking that our appropriation per the Intercept Provision under OFA Lending Policy is excluded?

John

From: Ronald Kwan
Sent: Thursday, October 26, 2017 4:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Comments on the wording in 3.1(a) on **Covenants**:

The Grantor hereby covenants and agrees with the Secured Party as follows:
Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.

(Where "Appropriations" is defined as under the FAA.)

Ron

From: Ronald Kwan
Sent: October 26, 2017 3:58 PM
To: John Kim
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Have you looked at the IESO Security Agreement draft, and particularly with respect to how it (and the intercept) would work in the context of an intercept provision.

Ron

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Sent: October 26, 2017 1:55 PM

To: Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

1 – Master Transfer and Servicing Agreement;
2 – IESO Security Agreement;
3 – Master Trust Indenture; and
4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

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: 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]

TORYS LLP[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

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From: John Kim
To: Ronald Kwan
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:23:09 PM

Hi Ron,

I am reading more along the line that if OPG is allowing IESO to use the appropriation for its intended purpose then they are essentially saying that operating appropriations are sacred as in you go use it to survive.

But you know my English is very second language….

John

From: Ronald Kwan
Sent: Thursday, October 26, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Rather that OPG appears to be allowing IESO to use the appropriations for their intended purpose, not as security for OPG, so should OPG be fussed if the OFA intercepts the appropriations, should it come to that?

Ron

From: John Kim
Sent: October 26, 2017 4:15 PM
To: Ronald Kwan
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi Ron,

Are you thinking that our appropriation per the Intercept Provision under OFA Lending Policy is excluded?

John

From: Ronald Kwan
Sent: Thursday, October 26, 2017 4:06 PM
To: John Kim <John.Kim@ofina.on.ca>

Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Comments on the wording in 3.1(a) on **Covenants**:

The Grantor hereby covenants and agrees with the Secured Party as follows:
Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.

(Where "Appropriations" is defined as under the FAA.)

Ron

From: Ronald Kwan
Sent: October 26, 2017 3:58 PM
To: John Kim
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Have you looked at the IESO Security Agreement draft, and particularly with respect to how it (and the intercept) would work in the context of an intercept provision.

Ron

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Sent: October 26, 2017 1:55 PM
To: Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

1 – Master Transfer and Servicing Agreement;
2 – IESO Security Agreement;
3 – Master Trust Indenture; and
4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

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: 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]

TORYS LLP[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

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From:	Tekle, Jonathan (MOF)
To:	Ronald Kwan
Cc:	Gavin He
Subject:	RE: Fair Hydro Regs/Bundle
Date:	Wednesday, June 21, 2017 9:08:32 AM

FYI – Cabinet is scheduled from 2:00 – 5:00 pm on June 27th.

Cheers,
JT

From: Tekle, Jonathan (MOF)
Sent: June 21, 2017 8:57 AM
To: Kwan, Ronald (OFA)
Cc: He, Gavin (OFA)
Subject: FW: Fair Hydro Regs/Bundle

Hi Ron,

Hope all is well!

ECO has bundled the MOF and Energy's Fair Hydro items - now tracking DTC although originally scheduled for the June 27 LRC.

Energy Regs won't be ready until Monday. Our item was approved yesterday late afternoon. Attached for your records.

Let me know if you have any questions.

Cheers,
Jonathan

From: McLean, David (MOF)
Sent: June 20, 2017 9:29 PM
To: Young, Gwendolynne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: FW: Fair Hydro Regs/Bundle

Gwen - see below. Can you please flag for the fine people in GBESI?

Jonathan - please let Ron Kwan and Gavin know.

Sent with BlackBerry Work
(www.blackberry.com[blackberry.com])

From: Wittman, Nancy (CAB) <Nancy.Wittman2@ontario.ca>

Date: Tuesday, Jun 20, 2017, 9:07 PM
To: McLean, David (MOF) <David.McLean@ontario.ca>, Tekle, Jonathan (MOF) <Jonathan.Tekle@ontario.ca>
Subject: Fw: Fair Hydro Regs/Bundle

Hi.

Want to make sure you are aware that ECO has bundled MOF and Energy's Fair Hydro items - now tracking DTC although originally schedule for the June 27 LRC.

I'm told that the energy regs won't be ready until Monday, unfortunately. Could you confirm the status of the MOF fair hydro item (apologies that I have not been tracking it very closely since Gen has been our point person on that item).

Thx. Nancy

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 2:18:04 PM

HI Ron,

I am scheduled to have a call with Anthony at 4pm today on these.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 12:24 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

To respond to the security issue per OPG-IESO negotiation, if it gets to that point.

And if we were to push IESO to resolve this issue with OPG in the next few days, before November 1st, do you think that would be doable?

And/or to get clarity from IESO/OPG on OPG's position on planned financing for the FHP Trust if the intercept is in place. Would the intercept push the cost of borrowing in Canada, or reduce access to a significant extent? Would it influence a decision on also seeking access to the U.S. debt markets?

Ron

From: John Kim
Sent: October-25-17 12:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Ron,

Sure, just sent Anthony an email.

As for the amendments question, do you mean the one to include the provision or the security issue per OPG-IESO negotiation?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 11:59 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I recall that you had mentioned last week that OPG and IESO would have another exchange on their services agreement. Would you be able to get an update from IESO on that and potential implications on the OFA credit facility to IESO.

Also, what would the potential proposed amendments to the facility look like?

Thanks,
Ron

From: John Kim
Sent: October-24-17 17:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM

To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	John Kim
Cc:	Usman Zahid
Subject:	RE: Finalization of OFA-IESO Credit Agreements
Date:	Wednesday, October 25, 2017 12:24:12 PM

Hi John,

To respond to the security issue per OPG-IESO negotiation, if it gets to that point.

And if we were to push IESO to resolve this issue with OPG in the next few days, before November 1st, do you think that would be doable?

And/or to get clarity from IESO/OPG on OPG's position on planned financing for the FHP Trust if the intercept is in place. Would the intercept push the cost of borrowing in Canada, or reduce access to a significant extent? Would it influence a decision on also seeking access to the U.S. debt markets?

Ron

From: John Kim
Sent: October-25-17 12:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Ron,

Sure, just sent Anthony an email.

As for the amendments question, do you mean the one to include the provision or the security issue per OPG-IESO negotiation?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 11:59 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I recall that you had mentioned last week that OPG and IESO would have another exchange on their services agreement. Would you be able to get an update from IESO on that and potential

implications on the OFA credit facility to IESO.

Also, what would the potential proposed amendments to the facility look like?

Thanks,
Ron

From: John Kim
Sent: October-24-17 17:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any

dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	RE: Finalization of OFA-IESO Credit Agreements
Date:	Wednesday, October 25, 2017 12:18:50 PM

Hi Ron,

Sure, just sent Anthony an email.

As for the amendments question, do you mean the one to include the provision or the security issue per OPG-IESO negotiation?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 11:59 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I recall that you had mentioned last week that OPG and IESO would have another exchange on their services agreement. Would you be able to get an update from IESO on that and potential implications on the OFA credit facility to IESO.

Also, what would the potential proposed amendments to the facility look like?

Thanks,
Ron

From: John Kim
Sent: October-24-17 17:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>

Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security

over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 11:59:10 AM

Hi John,

I recall that you had mentioned last week that OPG and IESO would have another exchange on their services agreement. Would you be able to get an update from IESO on that and potential implications on the OFA credit facility to IESO.

Also, what would the potential proposed amendments to the facility look like?

Thanks,
Ron

From: John Kim
Sent: October-24-17 17:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon –

'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain

information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:29:03 PM

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid

Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro

Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:27:19 PM

I meant last heard in the sense of Steen being ready. Tom was following up on the legal discussion.

From: John Kim
Sent: Tuesday, October 24, 2017 5:26 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the

agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:25:58 PM

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:41:31 PM

Hi Ron,

I put your edits back in…..sorry, maybe my email was confusing. I told them that you had a point and shared the version with your edits to Energy and IESO. Seconds after, Victor sent this email.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 4:40 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Hi John,

To meet that timeline, I suggest that you work quickly to get OFA Legal's confirmation on the limited legal meaning of OFA signing a letter with that "confirm" wording.

Ron

From: John Kim
Sent: October 24, 2017 4:28 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if you have any concerns / comments.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid; Gavin He
Subject:	RE: Finalization of OFA-IESO Credit Agreements
Date:	Wednesday, October 25, 2017 4:13:08 PM

Hi Ron,

I think we are in the clear. Anthony says that their negotiation with OPG Trust could take several weeks. OPG Trust want these and IESO is asking for rationale, including wanting to talk to Moody's and DBRS. So my assessment, which is the same as Anthony's, is that this could be a while.

Gavin was in the call with me and heard the same.

Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 2:18 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

HI Ron,

I am scheduled to have a call with Anthony at 4pm today on these.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 12:24 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

To respond to the security issue per OPG-IESO negotiation, if it gets to that point.

And if we were to push IESO to resolve this issue with OPG in the next few days, before November 1st, do you think that would be doable?

And/or to get clarity from IESO/OPG on OPG's position on planned financing for the FHP Trust if the

intercept is in place. Would the intercept push the cost of borrowing in Canada, or reduce access to a significant extent? Would it influence a decision on also seeking access to the U.S. debt markets?

Ron

From: John Kim
Sent: October-25-17 12:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Ron,

Sure, just sent Anthony an email.

As for the amendments question, do you mean the one to include the provision or the security issue per OPG-IESO negotiation?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 11:59 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I recall that you had mentioned last week that OPG and IESO would have another exchange on their services agreement. Would you be able to get an update from IESO on that and potential implications on the OFA credit facility to IESO.

Also, what would the potential proposed amendments to the facility look like?

Thanks,
Ron

From: John Kim
Sent: October-24-17 17:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

It's in the works now. Along with the blue sheet….

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the

amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO - OFA
Date: Thursday, October 19, 2017 9:04:33 PM

Hi Ron,

The current draft of the letter agreement is the version that came back from Energy. IESO hasn't touched it in terms of providing edits/comments.

Thanks,

John

From: Ronald Kwan
Sent: October-19-17 4:18 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO - OFA

Hi,

Do we have a current draft of the letter agreement that has been agreed to?

Ron

On Oct 19, 2017, at 4:13 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Fyi, IESO will move on signing the letter agreement. #2 below will likely to happen though they are resisting it so we need to account for that as a separate matter.
>
> ---
>
> **From:** Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
> **Sent:** Thursday, October 19, 2017 3:59 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: IESO - OFA
>
> Please call my cell 289-795-9426.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** October 18, 2017 1:53 PM
> **To:** Anthony Martinello
> **Subject:** RE: IESO - OFA
>
> Hi Anthony,
>
> Any update on OPG's position?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, October 17, 2017 11:06 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OFA

Ronald/John,

Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.
DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Gadi Mayman
To: Ronald Kwan
Subject: RE: IESO - OFA
Date: Tuesday, October 17, 2017 5:13:57 PM

Just left you a VM. Nothing urgent.

From: Ronald Kwan
Sent: Tuesday, October 17, 2017 4:00 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: Fwd: IESO - OFA

Hi Gadi,

Aside from Anthony introductory remarks, I think his point 2 may raise eyebrows.

Ron

Begin forwarded message:

> **From:** Anthony Martinello <Anthony.Martinello@ieso.ca>
> **Date:** October 17, 2017 at 11:05:56 AM EDT
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>, John Kim <John.Kim@ofina.on.ca>
> **Cc:** Victor Buza <Victor.Buza@ieso.ca>
> **Subject: IESO - OFA**
>
> Ronald/John,
>
> Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.
>
> A few items as FYI for the proposed fair hydro structure:
>
> 1.
> DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.
>
> 2.
> DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all

IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO - OFA
Date: Friday, October 20, 2017 8:13:42 AM

Hi Ron,

They have seen it….just reminded them that they had.

Thanks,

John

From: Ronald Kwan
Sent: Thursday, October 19, 2017 9:21 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO - OFA

Hi John,

Would you send me the current version, and has Legal reviewed it?

Thanks,
Ron

On Oct 19, 2017, at 9:04 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> The current draft of the letter agreement is the version that came back from Energy. IESO hasn't touched it in terms of providing edits/comments.
>
> Thanks,
>
> John
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** October-19-17 4:18 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: IESO - OFA
>
> Hi,
>
> Do we have a current draft of the letter agreement that has been agreed to?
>
> Ron

On Oct 19, 2017, at 4:13 PM, John Kim <John.Kim@ofina.on.ca> wrote:

Fyi, IESO will move on signing the letter agreement. #2 below will likely to happen though they are resisting it so we need to account for that as a separate matter.

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Thursday, October 19, 2017 3:59 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO - OFA

Please call my cell 289-795-9426.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 18, 2017 1:53 PM
To: Anthony Martinello
Subject: RE: IESO - OFA

Hi Anthony,

Any update on OPG's position?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, October 17, 2017 11:06 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OFA

Ronald/John,

Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.

DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim
Subject:	RE: IESO - Signing Authority Documents
Date:	Tuesday, June 19, 2018 2:44:38 PM

Still interim, or now permanent?

http://www.ieso.ca/en/corporate-ieso/leadership/executive-team/barb-anderson

Ron

From: John Kim
Sent: June-19-18 14:38
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO - Signing Authority Documents

FYI, Barb Anderson is the new CFO as you will see below.

John

From: Carlos Yep
Sent: Tuesday, June 19, 2018 12:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: IESO - Signing Authority Documents

John,
IESO is working on getting the incumbency certificate to us.

Currently, the advances+rollovers are approved in OLMS but I have asked settlements not to confirm the wire transfer with our bank – ie. Unless we confirm with our bank later today, the funds will not be in IESO's bank account in the morning of the settlement date, June 20.

Regards
Carlos

From: Sarah Harris
Sent: Tuesday, June 19, 2018 12:01 PM
To: Carlos Yep <Carlos.Yep@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Sujeev Jegatheeswaran <Sujeev.Jegatheeswaran@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>
Subject: RE: IESO - Signing Authority Documents

Hi Carlos,

I understand that you were communicating with Will yesterday on the IESO's signing authority for tomorrow's advances, and that you were referring the decision to John Kim's group.

Per Olga below, IESO is working on providing the incumbency certificate and board resolution first thing tomorrow morning. In this case, should Settlements hold back the payment until it is received tomorrow morning? I would prefer to let IESO know the implications, as they may need funds first thing in the morning.

I have provided them the option to provide a signature under corporate seal, like last time. This would ensure they have access to the funds in the morning.

Kindly advise.

Thanks,
Sarah

From: Olga Whiteley [mailto:Olga.Whiteley@ieso.ca]
Sent: Tuesday, June 19, 2018 10:02 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Subject: RE: IESO - Signing Authority Documents

Hi Sarah, our legal counsel is working on providing the incumbency certificate and board resolution first thing tomorrow morning (but we can use the corporate seal as plan B).
Regards.

From: Sarah Harris [mailto:Sarah.Harris@ofina.on.ca]
Sent: June 19, 2018 9:56 AM
To: William Tan; Olga Whiteley; Anthony Martinello
Subject: RE: IESO - Signing Authority Documents

Hello Olga,

In the interest of practicality, for this round, the CFO's signature under seal of the corporation is fine for the June advances. For the next month's advances, would you please send us a complete signing authority for the signatory of next month's notices.

Thanks,
Sarah

From: William Tan

Sent: Monday, June 18, 2018 5:22 PM
To: 'Olga Whiteley' <Olga.Whiteley@ieso.ca>; 'Anthony Martinello' <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: RE: IESO - Signing Authority Documents

Hello Olga,

My legal department replied back to me and unfortunately a redacted board resolution and certificate of incumbency is required.

Thanks,

Will

From: Olga Whiteley [mailto:Olga.Whiteley@ieso.ca]
Sent: Monday, June 18, 2018 3:51 PM
To: William Tan <William.Tan@ofina.on.ca>
Subject: RE: IESO - Signing Authority Documents

What is your number Will?

From: William Tan [mailto:William.Tan@ofina.on.ca]
Sent: June 18, 2018 3:45 PM
To: Anthony Martinello; Olga Whiteley
Cc: Sarah Harris; Carlos Yep; James Devine; Ricky Lai
Subject: RE: IESO - Signing Authority Documents

Hello Anthony and Olga,

I am following-up to get an indication of the solution you wish to pursue. Also, when will you be providing the documents. As a heads-up I will be out-of-the-office on Tuesday. For signatory related documents please coordinate with Sarah Harris.

Thanks,

Will

From: William Tan
Sent: Monday, June 18, 2018 11:38 AM
To: 'Anthony Martinello' <Anthony.Martinello@ieso.ca>; Olga Whiteley <Olga.Whiteley@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Carlos Yep <Carlos.Yep@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Ricky Lai <Ricky.Lai@ofina.on.ca>
Subject: IESO - Signing Authority Documents

Hello Anthony,

As per conversation regarding the required signing authority documents for Barb Anderson VP, & CFO on the election notices for June 20. Please provide completed documents for one of the following options below before June 20.

While option 6 is a suitable solution, it should be viewed as a temporary solution. Therefore, I recommend option 1, as a comprehensive long-term solution.

Options provided in May, 2018:

1. Certified resolution of the board of directors for IESO authorizing both the Fair Hydro Plan Credit Agreement and for the Existing Credit Facility authorizing the signatory and Updated Incumbency Certificate.
2. ~~A delegation of authority from the (former) IESO CFO to the IESO CEO (or other authorized signatories).~~
3. A general signing authority resolution of the IESO Board of Directors.
4. By-law or other document in place providing authorization to the IESO ~~CEO~~ CFO.
5. A certificate from the IESO Corporate Secretary stating that the IESO ~~CEO~~ CFO has signing authority.
6. A signature under seal of the corporation.

Best regards,

Will Tan| *Documentation & Analysis Specialist*
Capital Markets Division | Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3, CANADA
Tel. (416) 325-8090 | Fax: (416) 860-8346
william.tan@ofina.on.ca

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Tuesday, September 19, 2017 8:15:59 AM

Hi Ron,

Pls. let me know if there is anything I could do further on this.

Thanks,

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

---

From: Ronald Kwan
Sent: September-18-17 17:38
To: Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month`s discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ken Kandeepan
To: Ronald Kwan; Anna Strathy
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:57:35 AM

Agreed with Ron's response we can put forward an amendment to the OFA Lending Policy, at the next OFA Board meeting.

thanks

Ken k

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:54 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi,

Just saw your response. I sent an email too.

Ron

From: Ken Kandeepan
Sent: September 18, 2017 10:47 AM
To: Anna Strathy
Cc: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 "Security" section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this is requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister's exemption should have no impact on IESO's accounting. On

the other hand by not doing so a requirement in the OFA's Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he's hoping for a response to the question below before 1pm today when he'll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive

was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ken Kandeepan
To: Anna Strathy
Cc: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:47:12 AM

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 "Security" section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this is requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister's exemption should have no impact on IESO's accounting. On the other hand by not doing so a requirement in the OFA's Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he's hoping for a response to the question below before 1pm today when he'll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking

the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Anna Strathy
To: Ronald Kwan
Cc: Gadi Mayman; Ken Kandeepan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:10:57 AM

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ronald Kwan
To: Anna Strathy; Ken Kandeepan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 5:38:02 PM

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month`s discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of

an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies

lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: John Kim
To: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 5:31:51 PM
Attachments: RE Energy"s PRRT.msg

Hi Ron,

Looks fine to me. I believe OFA Legal holds the key to this. I don't believe this is required as the lending policy clause has no relevance in this case. We could argue that the same conclusion was made by then OFA Legal staff for the first facility and all the amendments since.

In my opinion, as a suggestion, a meeting including Gadi and Legal staff could help resolve the issue, rather than involving Energy necessarily

I don't see how Energy's sign-off would happen quickly or without difficulty as they would not want to risk their program spending. Also, at what level would the authority come for the countersign and that could involve Energy staff needing to go the senior most level in their ministry.

Thanks,

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:25 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi John,

How about this as a response:

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context, Energy may need to provide such agreement, and we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise) and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward with a general amendment to the OFA lending policy to provide for credit facilities that have no intercept provisions when an agency has no appropriated amounts to intercept.

Ron

From: John Kim
Sent: September-18-17 14:49
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

This is a very difficult to do, according to Lisa S. You need to get Energy to agree to that, if I recall this right.

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 2:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

Hi John,

Let's discuss.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting

approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably,

raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: James Strang (MOF) []
To: John Kim [John.Kim@ofina.on.ca]
CC: Chris Skubel (MGS) [Chris.Skubel@ontario.ca]; Afshin Malekzadeh (MOHLTC) [Afshin.Malekzadeh@ontario.ca]; Bruno Amara [Bruno.Amara@ofina.on.ca]
Subject: RE: Energy's PRRT
Date: Friday, August 18, 2017 13:29:18

You are correct.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 1:28 PM
To: Strang, James (TBS)
Cc: Skubel, Chris (TBS); Malekzadeh, Afshin (TBS); Bruno Amara
Subject: RE: Energy's PRRT

Thanks. OREC is not IESO's operating expense/allocation, right? It's a program expense facilitated through the IESO.

Agree?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 1:19 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Chris Skubel (MGS) <Chris.Skubel@ontario.ca>; Afshin Malekzadeh (MOHLTC) <Afshin.Malekzadeh@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

Sorry for the delay, had to dig in the email archives.

There is no IESO allocation in Printed Estimates. There is an OREC transfer payment. In the 17-18 PRRT workbook for OREC is the following:

- Electricity utilities are reimbursed by submitting and receiving claims which are

netted against their other monthly transactions from the IESO, and the IESO submits and receives one monthly amount from the Ontario Financing Authority on behalf of the Ministry of Energy – this process is streamlined and leverages an already existing reimbursement process, thereby minimizing costs.

The second attachment, email, contains the consolidation worksheet from OPCD. For IESO, I don't see any Transfer Payment flows in from the Province.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:57 PM
To: Strang, James (TBS)
Subject: RE: Energy's PRRT

Is there a way to quickly see if any allocations were made for the IESO? Whichever way is good. We just want to confirm there is no appropriation for the IESO's operation or operating expense.

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:55 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Energy's PRRT

So do you want the final minutes, their submission, the assessment note?

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:55 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: RE: Energy's PRRT

Last year's?

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Friday, August 18, 2017 12:54 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Energy's PRRT

20-18-19 PRRT hasn't started as yet.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 12:53 PM
To: Strang, James (TBS)
Cc: Bruno Amara
Subject: Energy's PRRT

Hi James,

Hope all's well.

Can you share Energy's approved PRRT? Have some urgent stuff we are dealing with.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 5:25:18 PM

Hi John,

How about this as a response:

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context, Energy may need to provide such agreement, and we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise) and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward with a general amendment to the OFA lending policy to provide for credit facilities that have no intercept provisions when an agency has no appropriated amounts to intercept.

Ron

From: John Kim
Sent: September-18-17 14:49
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

This is a very difficult to do, according to Lisa S. You need to get Energy to agree to that, if I recall this right.

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 2:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

Hi John,

Let's discuss.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's

exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.
>
> While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.
>
> Just as a reminder, attached are the related materials.
>
> Happy to discuss.
>
> Ron

From: Ronald Kwan
To: John Kim
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 2:50:04 PM

Hi,

Let's discuss.

Ron

From: John Kim
Sent: September-18-17 14:49
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

This is a very difficult to do, according to Lisa S. You need to get Energy to agree to that, if I recall this right.

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 2:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

Hi John,

Let's discuss.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor

have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue

of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From:	John Kim
To:	Ronald Kwan
Subject:	RE: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 2:49:11 PM

Hi Ron,

This is a very difficult to do, according to Lisa S. You need to get Energy to agree to that, if I recall this right.

John

From: Ronald Kwan
Sent: Monday, September 18, 2017 2:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

Hi John,

Let's discuss.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly

settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.
>
> While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.
>
> Just as a reminder, attached are the related materials.
>
> Happy to discuss.
>
> Ron

From: Anna Strathy
To: Ken Kandeepan; Ronald Kwan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 2:40:16 PM

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From:	Anna Strathy
To:	Gadi Mayman
Cc:	Ken Kandeepan; Ronald Kwan
Subject:	RE: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 11:09:29 AM

Will do.

From: Gadi Mayman
Sent: Monday, September 18, 2017 11:09 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Thanks, Anna. Please let Dave know what's happening.

On Sep 18, 2017, at 11:01 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Thanks, Ron.
>
> Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.
>
> Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?
>
> Thanks, Anna
>
> **From:** Ronald Kwan
> **Sent:** Monday, September 18, 2017 10:53 AM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Re: IESO Credit Facility and Intercept Provision Exemption
>
> Hi Anna,
>
> The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.
>
> As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA

lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption

from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Anna Strathy
To: Gadi Mayman
Cc: Ken Kandeepan; Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:01:41 AM

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.
>
> While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.
>
> Just as a reminder, attached are the related materials.
>
> Happy to discuss.

Ron

From:	Ronald Kwan
To:	Gadi Mayman
Cc:	Anna Strathy; Ken Kandeepan; John Kim
Subject:	RE: IESO Credit Facility and Intercept Provision Exemption
Date:	Tuesday, September 19, 2017 8:45:25 AM

Hi Gadi,

We'll follow up with Energy and OFA Legal on that path. John had had previous discussions with OFA Legal, so we'll communicate to them the proposed path too.

Ron

From: Gadi Mayman
Sent: September-18-17 11:28 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

I like the proposed path in the last paragraph of your email, Ron. Let's see if we can make that work.

Gadi

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:38:02 PM
To: Anna Strathy; Ken Kandeepan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month`s discussions by staff with OFA

Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's

exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.
>
> While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.
>
> Just as a reminder, attached are the related materials.
>
> Happy to discuss.
>
> Ron

From: Tekle, Jonathan (MOF)
To: Ronald Kwan; Marianne Nguyen (MCYS)
Subject: RE: IESO Credit Facility
Date: Friday, September 08, 2017 4:15:22 PM

Hi Ron,

Thanks for checking in.

This is being reviewed and will work to get you approval as soon as possible - likely early next week.

Cheers,
Jonathan

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 8, 2017 4:08 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Hi Marianne, Jonathan,

Just wanted to check in on the status of this.

I understand that IESO is expressing timelines concerns on this.

Any way we can help the process along. Would it be possible to bring this forward to the Minister for approval in the near term?

Thanks,
Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-18-17 19:20
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan, Marianne,

FYI.

Have a good weekend.

Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-16-17 17:10
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Cc: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan,

For sure. Staff are putting together a package.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: August-16-17 17:08
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Marianne Nguyen (MCYS)
Cc: Jonathan Tekle (CAB)
Subject: RE: IESO Credit Facility
Date: Friday, September 08, 2017 4:07:51 PM

Hi Marianne, Jonathan,

Just wanted to check in on the status of this.

I understand that IESO is expressing timelines concerns on this.

Any way we can help the process along. Would it be possible to bring this forward to the Minister for approval in the near term?

Thanks,
Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-18-17 19:20
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan, Marianne,

FYI.

Have a good weekend.

Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-16-17 17:10
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Cc: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan,

For sure. Staff are putting together a package.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: August-16-17 17:08
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more

details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Marianne Nguyen (MCYS); Jonathan Tekle (CAB)
Subject:	RE: IESO Credit Facility
Date:	Friday, August 18, 2017 7:19:35 PM
Attachments:	01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean3.docx DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinalClean.docx

---

Hi Jonathan, Marianne,

FYI.

Have a good weekend.

Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-16-17 17:10
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Cc: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan,

For sure. Staff are putting together a package.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: August-16-17 17:08
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM

To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT PROVISION ("INTERCEPT EXEMPTION DIRECTIVE")
REQUIRED UNDER THE OFA'S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the "Original Credit Facility Agreement", see Background section) from the current $975 million to $475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to $2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

  > Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

  > The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the $475 million facility (to be amended from the current $975 million facility).

- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
  - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

<u>The IESO</u>

- 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.

- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance ("Minister") approved and directed the Ontario Fiancing Authority ("OFA") to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act*, *1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Effective January 1, 2015, the Ontario Power Authority (the "OPA") and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to directives dated December 22nd, 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28th, 2016, the Minister approved and directed the OFA to make loans (the "Advances") to the OPA and the IESO after the Amalgamation from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA and IESO after the Amalgamation to meets its purposes.

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility of up to $2 billion to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

Minister of Finance

Per _____

The Honourable Liz Sandals

President of Treasury Board

Alternate for the Minister of Finance

From: Ronald Kwan
To: Jonathan Tekle (CAB)
Cc: Marianne Nguyen (MCYS)
Subject: RE: IESO Credit Facility
Date: Wednesday, August 16, 2017 5:09:38 PM

Hi Jonathan,

For sure. Staff are putting together a package.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: August-16-17 17:08
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Tekle, Jonathan (MOF)
To: Marianne Nguyen (MCYS); Ronald Kwan
Subject: RE: IESO Credit Facility
Date: Wednesday, August 16, 2017 5:08:17 PM

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Nguyen, Marianne (MOF)
To: Ronald Kwan
Cc: Jonathan Tekle (CAB)
Subject: RE: IESO Credit Facility
Date: Wednesday, August 16, 2017 4:57:37 PM

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Jonathan Tekle (CAB); Marianne Nguyen (MCYS)
Bcc: John Kim; Usman Zahid
Subject: RE: IESO Credit Facility
Date: Friday, September 08, 2017 4:47:41 PM

Thanks Jonathan.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: September-08-17 16:15
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Ron,

Thanks for checking in.

This is being reviewed and will work to get you approval as soon as possible - likely early next week.

Cheers,
Jonathan

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 8, 2017 4:08 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Hi Marianne, Jonathan,

Just wanted to check in on the status of this.

I understand that IESO is expressing timelines concerns on this.

Any way we can help the process along. Would it be possible to bring this forward to the Minister for approval in the near term?

Thanks,
Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-18-17 19:20
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan, Marianne,

FYI.

Have a good weekend.

Ron

-----Original Message-----
From: Ronald Kwan
Sent: August-16-17 17:10
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Cc: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>
Subject: RE: IESO Credit Facility

Hi Jonathan,

For sure. Staff are putting together a package.

Ron

-----Original Message-----
From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: August-16-17 17:08
To: Marianne Nguyen (MCYS) <Marianne.Nguyen@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility

I'd have to loop in Dave on this one.

Ron - understand you mentioned the urgency around this at our weekly. Let's chat further on this one - need more details around urgency and risks with timelines.

Also, need to loop in Nancy prior to Minister approval.

-----Original Message-----
From: Nguyen, Marianne (MOF)
Sent: August 16, 2017 4:58 PM
To: Kwan, Ronald (OFA)
Cc: Tekle, Jonathan (MOF)
Subject: RE: IESO Credit Facility

Unfortunately, that doesn't seem likely.

There are a number of other signing packages that I believe Jonathan said could be delegated. Jon - would this qualify as well?

-----Original Message-----
From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: August-16-17 4:19 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: IESO Credit Facility

Hi Marianne,

Staff are looking at pulling together a package on the exception to the OFA Lending Policy discussed yesterday.

Would the Minister be available over the next few days to approve such an exception? The IOESO has expressed some urgency to get the new facility in place.

Thanks,

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO OEFC credit facilities
Date: Tuesday, November 28, 2017 8:28:52 PM

Thanks Ron.

From: Ronald Kwan
Sent: November-28-17 7:10 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I moved a bullet and changed a heading.

Ron

From: John Kim
Sent: November-28-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: John Kim
Subject: RE: IESO OEFC credit facilities
Date: Tuesday, November 28, 2017 7:09:31 PM
Attachments: IESO-OEFC Note_v8.docx

Hi John,

I moved a bullet and changed a heading.

Ron

From: John Kim
Sent: November-28-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the

intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

Hi John,

Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

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.

- On November 28, 2017, IESO staff wrote to staff that without the terms of the OEFC facilities being amended, it would need to ask for an interim waiver from the OEFC to avoid being in default.

CONTEXT

- 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 sought and received 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 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.
  - 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.
  - 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.

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against 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.
  - The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount 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, the loan and the credit facilities are "subject to such other terms as OEFC deems appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permited liens on November 6, 2017.

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 exisiting 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 28, 2017

From:	John Kim
To:	Ronald Kwan
Subject:	RE: IESO OEFC credit facilities
Date:	Tuesday, November 28, 2017 6:32:17 PM
Attachments:	IESO-OEFC Note_v7_Markup4.docx

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM

To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

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~~sought and received 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."*

  - On November 28, 2017, IESO staff wrote to Corporate and Electricity Finane Division staff that without the terms of the OEFC facilities being amended, it would need to ask for an interim waiver from the OEFC to avoid being 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 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.
  - 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.
  - 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 [RK1]: Do we have updated wording for this?

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against 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.
  - The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount 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, the loan and the credit facilities are "subject to such other terms as OEFC deeams appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and ~~a~~ new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permited liens on November 6, 2017.

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 exisiting 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 2~~1~~8, 2017

From: Ronald Kwan
To: John Kim
Subject: RE: IESO OEFC credit facilities
Date: Tuesday, November 28, 2017 4:51:17 PM
Attachments: IESO-OEFC Note_v7_Markup3.docx

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

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."*

Commented [RK1]: Do we have updated wording for this?

- 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 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.
  - 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.
  - 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.

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against 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.

- The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount 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, the loan and the credit facilities are "subject to such other terms as OEFC de~~e~~ams appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and ~~a~~ new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permited liens on November 6, 2017.

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 exisiting 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 2~~1~~8, 2017

From: Ronald Kwan
To: John Kim
Subject: RE: IESO OEFC credit facilities
Date: Tuesday, November 28, 2017 10:56:18 PM

Thanks John.

And please remind me – has OFA Legal concurred that OEFC management can make the decision to amend without going to the Board first (and report on it afterwards, instead)?

Ron

From: John Kim
Sent: November-28-17 8:29 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Thanks Ron.

From: Ronald Kwan
Sent: November-28-17 7:10 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I moved a bullet and changed a heading.

Ron

From: John Kim
Sent: November-28-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim

Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From:	Ronald Kwan
To:	John Kim
Cc:	Gavin He
Subject:	RE: IESO Security Agreement
Date:	Monday, November 20, 2017 5:31:20 PM

Hi John,

Please discuss with Tim the interaction with the regulation and see if you can get a copy for review.

Thanks,
Ron

From: John Kim
Sent: November-20-17 17:20
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Security Agreement

Fyi.

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Monday, November 20, 2017 4:58 PM
To: John Kim <John.Kim@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: IESO Security Agreement

John and Opal,

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.

I have not spoken to Energy Legal on this point, but have asked for their input. They may not have been involved with these discussions, though, so I am not sure if they will have anything to add.

Please let me know if you would like to discuss further.

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: Salman Qadir
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Gavin He; Deena Padamadan
Subject: RE: IESO Treasury Policy - likely revising for June 2017
Date: Wednesday, June 14, 2017 4:07:00 PM
Attachments: Item 8(iii) BLACKLINED Treasury Policy June 14 2017.pdf
Item 8(iv) BLACKLINED Schedule A - IESO Treasury Policy.pdf

Hi Ron/all,

Attached is the Treasury Policy approved by IESO's Board. It looks like the comments we sent were not incorporated. Anthony mentioned he will be aiming to send a letter to Minister of Finance later this week.

Regards,
Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:57 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

I would think Anthony would be familiar, as he wrote to the Minister in 2015 for approval of the policy at that time. But, good to remind him, and get his targeted timelines.

John, Bruno, we should try and have it for the bundle of FHP-related pieces that we'd bring forward to brief the Minister on towards the end of June.

Ron

From: Salman Qadir
Sent: June-14-17 12:52
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

It's a good question that I only brought up briefly with Anthony. We may to advise them on the

process a bit.

I'll follow up with him at the same time when he gets back to me.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

When would they be submitting the change for the Minister's approval, and when would they need the approval by, for purposes of implementing the FHP?

Ron

From: Salman Qadir
Sent: June-14-17 11:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>

Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP

debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Director~~Manager~~, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

~~v.~~vi. As directed by the Minister of Energy;

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	***Allowable Counterparties or Issuers***	***Minimum S&P's Rating or equivalent ([1])***	***Maximum Face Amounts per counterparty or issuer***	***Max Term Limit***
1. Deposits held in bank accounts *2. Term Deposits* *3. Bankers' Acceptances* *4. Bearer Deposit Notes* *5. Certificates of Deposit* *6. Guaranteed Investment Certificates*	*Canadian Schedule I Banks*	*Short term: **"A-1+"***	*$~~420~~500 million per counterparty;*	*65 days*
7. Treasury Bills *8. Bonds* *9. Debentures* *10. Promissory Notes*	*Government of Canada* *Or* *Canadian Provincial Government,* *Or* *Government Agency (fully guaranteed by the Government of Canada or Provincial government)*	*TBills and Promissory Notes: "**A-1+**"* *Bonds and Debentures: "**AA-**"*	*Government of Canada and Province of Ontario: unlimited* *Other: $500million*	*365 days*
11. US$: Spot Market Purchases	*Canadian Schedule I Banks*	*Short term: "**A-1+**"*	*The total estimated US$ expenditures within the next 100 days.* *Maximum of US$5million*	*100 days*
12. US $: Forward Foreign Exchange Contracts	*Canadian Schedule I Banks*	*Up to 1 year: "**A-1+**"* *Long term: **"AA-"***	*The total estimated US$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US$ currency held by the IESO.* *Maximum of US$25million*	*25 months ([2])*

[1] All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).
[2] US$ spot, and US$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

From:	Ronald Kwan
To:	Salman Qadir; John Kim; Bruno Amara
Cc:	Gavin He; Deena Padamadan
Subject:	RE: IESO Treasury Policy - likely revising for June 2017
Date:	Wednesday, June 14, 2017 12:57:24 PM

Thanks Salman.

I would think Anthony would be familiar, as he wrote to the Minister in 2015 for approval of the policy at that time. But, good to remind him, and get his targeted timelines.

John, Bruno, we should try and have it for the bundle of FHP-related pieces that we'd bring forward to brief the Minister on towards the end of June.

Ron

From: Salman Qadir
Sent: June-14-17 12:52
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

It's a good question that I only brought up briefly with Anthony. We may to advise them on the process a bit.

I'll follow up with him at the same time when he gets back to me.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

When would they be submitting the change for the Minister's approval, and when would they need the approval by, for purposes of implementing the FHP?

Ron

From: Salman Qadir
Sent: June-14-17 11:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** RE: IESO Treasury Policy - likely revising for June 2017
>
> Hi,
>
> Just a thought, as attached.
>
> Comments and considerations?
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-05-17 14:41
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** FW: IESO Treasury Policy - likely revising for June 2017
>
> Hi Ron
>
> Attached is the IESO Treasury Policy required annually. See Anthony's email below for

two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100

million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]

Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Salman Qadir
To:	Ronald Kwan; John Kim; Bruno Amara
Cc:	Gavin He; Deena Padamadan
Subject:	RE: IESO Treasury Policy - likely revising for June 2017
Date:	Wednesday, June 14, 2017 12:52:09 PM

Hi Ron,

It's a good question that I only brought up briefly with Anthony. We may to advise them on the process a bit.

I'll follow up with him at the same time when he gets back to me.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

When would they be submitting the change for the Minister's approval, and when would they need the approval by, for purposes of implementing the FHP?

Ron

From: Salman Qadir
Sent: June-14-17 11:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).

From: Ronald Kwan
Sent: Monday, June 05, 2017 6:00 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:

• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

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

Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Ronald Kwan
To:	Salman Qadir; John Kim; Bruno Amara
Cc:	Gavin He; Deena Padamadan
Subject:	RE: IESO Treasury Policy - likely revising for June 2017
Date:	Wednesday, June 14, 2017 12:12:41 PM

Thanks Salman.

When would they be submitting the change for the Minister's approval, and when would they need the approval by, for purposes of implementing the FHP?

Ron

From: Salman Qadir
Sent: June-14-17 11:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** RE: IESO Treasury Policy - likely revising for June 2017
>
> Hi,
>
> Just a thought, as attached.
>
> Comments and considerations?
>
> Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1

day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>;

Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From: Salman Qadir
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Gavin He; Deena Padamadan
Subject: RE: IESO Treasury Policy - likely revising for June 2017
Date: Wednesday, June 14, 2017 11:59:29 AM

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** RE: IESO Treasury Policy - likely revising for June 2017
>
> Hi,
>
> Just a thought, as attached.
>
> Comments and considerations?
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-05-17 14:41
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** FW: IESO Treasury Policy - likely revising for June 2017
>
> Hi Ron
>
> Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet

heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan

Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files

transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Ronald Kwan
To:	John Kim; Bruno Amara; Salman Qadir
Cc:	Gavin He; Deena Padamadan
Subject:	RE: IESO Treasury Policy - likely revising for June 2017
Date:	Wednesday, June 14, 2017 11:17:57 AM

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).

From: Ronald Kwan
Sent: Monday, June 05, 2017 6:00 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:

• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>

Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From: Salman Qadir
To: Ronald Kwan; Bruno Amara
Cc: John Kim; Gavin He
Subject: RE: IESO Treasury Policy - likely revising for June 2017
Date: Tuesday, June 06, 2017 9:25:13 AM

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** RE: IESO Treasury Policy - likely revising for June 2017
>
> Hi,
>
> Just a thought, as attached.
>
> Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM

To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Cc:	Gavin He; Salman Qadir
Subject:	RE: IESO Treasury Policy - likely revising for June 2017
Date:	Monday, June 05, 2017 6:00:21 PM
Attachments:	Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures ("Treasury Policy")			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	**Treasury 01**
Subject.:	**IESO TREASURY POLICY**	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	June 14, 2017~~n / a~~

1. DEFINITIONS

CFO: means the IESO's Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

a) To adopt a policy for the sound and efficient management of the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;

b) To make investments when the investments are advisable for the sound and efficient management of the IESO's financial affairs;

c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans[1].

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 **Manager, Treasury and Pension Operations (or equivalent)** is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

[1] Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 **Permitted Borrowings:**

a) All new borrowing facilities must be approved by the IESO Board of Directors.

b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.

c) All borrowing facilities must be denominated in Canadian dollars.

d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).

e) The IESO may only borrow from the following list of lenders:
   i. Government of Canada, Canadian provincial governments or any of their agencies; and
   ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;

f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.

g) Borrowing facilities shall only be utilized for the following purposes:
   i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
   ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
   iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
   ~~iii.~~iv. To ensure funding of any amounts, including deferral accounts and timing differences, pertaining to the IESO's mandate under the Ontario~~'s~~ Fair Hydro Plan Act~~program~~;
   ~~iv.~~v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

Commented [RK1]: Should the wording provide some flavor and legislative context, as per some of the other sub-clauses?

~~v.~~vi. As directed by the Minister of Energy.~~;~~

6.2 **Permitted Investments and Forward Foreign Exchange Contracts:**

a) See **Schedule "A": Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
b) Investments or counterparties not listed in **Schedule "A"** are prohibited.
c) All investments must be denominated in either Canadian or US dollars.

End.

From: Ronald Kwan
To: Salman Qadir; John Kim; Bruno Amara
Cc: Gavin He; Deena Padamadan
Subject: RE: IESO Treasury Policy - likely revising for June 2017
Date: Wednesday, June 14, 2017 5:26:44 PM

Thanks Salman.

It was just a thought to better specify the revision, and not be misconstrued out of context, but I don't think it was critical.

Ron

From: Salman Qadir
Sent: June-14-17 16:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron/all,

Attached is the Treasury Policy approved by IESO's Board. It looks like the comments we sent were not incorporated. Anthony mentioned he will be aiming to send a letter to Minister of Finance later this week.

Regards,
Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:57 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

I would think Anthony would be familiar, as he wrote to the Minister in 2015 for approval of the policy at that time. But, good to remind him, and get his targeted timelines.

John, Bruno, we should try and have it for the bundle of FHP-related pieces that we'd bring forward to brief the Minister on towards the end of June.

Ron

From: Salman Qadir
Sent: June-14-17 12:52
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

It's a good question that I only brought up briefly with Anthony. We may to advise them on the process a bit.

I'll follow up with him at the same time when he gets back to me.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Salman.

When would they be submitting the change for the Minister's approval, and when would they need the approval by, for purposes of implementing the FHP?

Ron

From: Salman Qadir
Sent: June-14-17 11:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Ron,

The comments were provided back to Anthony at IESO. He said the comments, if needed, would be walked in since he received it past their deadline. I will follow up with him to see what was approved

by their board since the meeting was supposed to happen yesterday or today I believe.

Salman

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 11:18 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

What's the status of this?

Ron

From: Salman Qadir
Sent: June-06-17 09:25
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks all.

I'll relay these back to Anthony at IESO.

Regards,
Salman

From: Ronald Kwan
Sent: Tuesday, June 06, 2017 8:49 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy - likely revising for June 2017

Hi,

Please discuss with IESO.

Thanks,

Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).

From: Ronald Kwan
Sent: Monday, June 05, 2017 6:00 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi,

Just a thought, as attached.

Comments and considerations?

Ron

From: Bruno Amara
Sent: June-05-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy - likely revising for June 2017

Hi Ron

Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

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

Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

1. Permitting Fair Hydro program borrowings – self explanatory rationale; and
2. Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:
• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This has resulted in the IESO managing higher cash-flows

- While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the

intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Friday, June 23, 2017 3:52:13 PM
Attachments:	03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min_v2.doc

Hi Ron,

We are good with your edits.

I will check in with Jonathan to see if he wants to see a draft package first, if so, I will share a draft package with him.

Regards,
Gavin He

From: Ronald Kwan
Sent: Friday, June 23, 2017 3:46 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thanks Salman.

A suggestion for the DM-Minister's memo.

Gavin, would Jonathan want a draft soft-copy package to review as well?

Ron

From: Salman Qadir
Sent: June-23-17 14:38
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Additional language has been incorporated and I have saved a clean v3. We'll get you the hard copy.

Regards,
Salman

From: Ronald Kwan
Sent: Friday, June 23, 2017 12:42 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Salman,

Some suggestions.

Thanks,
Ron

From: Salman Qadir
Sent: June-22-17 16:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan
Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>

Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

Attached for your review and consideration is the Independent Electricity System Operator's (IESO) updated Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
   - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
   - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan

From:	Ronald Kwan
To:	Salman Qadir
Cc:	John Kim; Bruno Amara; Gavin He
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Friday, June 23, 2017 3:46:27 PM
Attachments:	03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min_Markup.doc

Thanks Salman.

A suggestion for the DM-Minister's memo.

Gavin, would Jonathan want a draft soft-copy package to review as well?

Ron

From: Salman Qadir
Sent: June-23-17 14:38
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Additional language has been incorporated and I have saved a clean v3. We'll get you the hard copy.

Regards,
Salman

From: Ronald Kwan
Sent: Friday, June 23, 2017 12:42 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Salman,

Some suggestions.

Thanks,
Ron

From: Salman Qadir
Sent: June-22-17 16:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan
Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

Attached for your review and consideration is the Independent Electricity System Operator's (IESO) updated Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
   - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
   - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

~~No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.~~

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan

From:	Salman Qadir
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Gavin He
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Friday, June 23, 2017 2:38:10 PM

Hi Ron,

Additional language has been incorporated and I have saved a clean v3. We'll get you the hard copy.

Regards,
Salman

From: Ronald Kwan
Sent: Friday, June 23, 2017 12:42 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Salman,

Some suggestions.

Thanks,
Ron

From: Salman Qadir
Sent: June-22-17 16:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan
Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	Salman Qadir
Cc:	John Kim; Bruno Amara; Gavin He
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Friday, June 23, 2017 12:42:25 PM
Attachments:	01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v2_Markup.docx

Hi Salman,

Some suggestions.

Thanks,
Ron

From: Salman Qadir
Sent: June-22-17 16:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan
Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan

Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- 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, in the early years of the plan a portion of the Global Adjustment charge to ratepayers will be deferred for recovery to the future and 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~~.

- The IESO under the OFHP Act has a right to recover the deferred charges (or "regulatory asset"), which is expected to be sold by IESO to a financing entity established by OPG.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.
    - ~~As such, t~~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 legislation, OPG's SPV is not required to purchase any portion of the regulatory asset.
    - The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- ~~Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.~~
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.

Formatted

Formatted

Formatted: Font: 11 pt, Font color: Auto

Formatted: Font: 11 pt, Font color: Auto

Formatted

- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.
- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 2~~2~~3, 201~~6~~7

From: Salman Qadir
To: Ronald Kwan; Gavin He
Cc: John Kim; Bruno Amara
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14
Date: Thursday, June 22, 2017 4:18:37 PM
Attachments: 01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v2.docx

---

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan
Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- 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 charge to ratepayers will be deferred to the future. The deferred charges (or "regulatory asset") is expected to be sold by IESO to a

financing entity established by OPG. Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.

- As such, there is expected to be initial and ongoing IESO cash flow requirement timing differences. The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- ~~Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.~~
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.
- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 22, 2016

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Thursday, June 22, 2017 12:57:55 PM
Attachments:	01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v1.docx 02 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-CEO-DM.docx 03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min.doc 04 - IESO Treasury Policy 2017 - Minister of Finance Approval - Min Response Approval.doc

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy

Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed are not significant in nature and raise no concerns with staff.
- No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the *Ontario Fair Hydro Plan Act, 2017.*
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONTEXT AND BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- The IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 22, 2016

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

Ontario

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

Attached for your review and consideration is a memo to the Minister of Finance recommending the Minister of Finance to approve the Independent Electricity System Operator's (IESO) Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
    - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

…/2

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Attached is a briefing note for your consideration, as well as an approval letter for the Minister's signature. OFA staff are available should you require a further briefing or have any questions.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Approval of IESO's Treasury Policy**

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
   - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.

2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
   - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

…/2

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

Anthony Martinello
Director, Treasury and Pension Operations
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Re: IESO Treasury Policy (version June 14, 2015)

Dear Mr. Martinello,

I am writing in regards to your request for approval of the IESO's Treasury Policy approved by its Board of Directors on June 14, 2015.

I am pleased to provide my approval of this policy.

Thank you for your attention to this matter. Please continue to work with staff from the Ontario Financing Authority on any future issues pertaining to the IESO Treasury Policy.

Sincerely,

Charles Sousa
Minister

From:	Ronald Kwan
To:	Gavin He
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: IESO Treasury Policy for Approval - Reg 280/14
Date:	Friday, June 23, 2017 4:03:52 PM
Attachments:	04 - IESO Treasury Policy 2017 - Minister of Finance Approval - Min Response Approval_Markup.doc

Hi,

On the approval, can we drop one part?

Ron

From: Gavin He
Sent: June-23-17 15:52
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

We are good with your edits.

I will check in with Jonathan to see if he wants to see a draft package first, if so, I will share a draft package with him.

Regards,
Gavin He

From: Ronald Kwan
Sent: Friday, June 23, 2017 3:46 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thanks Salman.

A suggestion for the DM-Minister's memo.

Gavin, would Jonathan want a draft soft-copy package to review as well?

Ron

From: Salman Qadir
Sent: June-23-17 14:38
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Additional language has been incorporated and I have saved a clean v3. We'll get you the hard copy.

Regards,
Salman

From: Ronald Kwan
Sent: Friday, June 23, 2017 12:42 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Salman,

Some suggestions.

Thanks,
Ron

From: Salman Qadir
Sent: June-22-17 16:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please see attached, v2. Your changes were incorporated and a couple of bullets were added about FHP and IESO's role (i.e. its need for borrowing).

Regards,
Salman

From: Ronald Kwan

Sent: Thursday, June 22, 2017 3:32 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO Treasury Policy for Approval - Reg 280/14

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] |

LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

Anthony Martinello
Director, Treasury and Pension Operations
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Re: IESO Treasury Policy (version June 14, 2017)

Dear Mr. Martinello,

I am writing in regards to your request for approval of the IESO's Treasury Policy approved by its Board of Directors on June 14, 2017.

I am pleased to provide my approval of this policy.

~~Thank you for your attention to this matter.~~ Please continue to work with staff from the Ontario Financing Authority on any future issues pertaining to the IESO Treasury Policy.

Sincerely,

Charles Sousa
Minister

From:	Ronald Kwan
To:	Gavin He
Cc:	Bruno Amara; Salman Qadir
Subject:	RE: IESO and OFA - FHP Line of Credit Facility Directive
Date:	Tuesday, June 27, 2017 5:35:35 PM

Thanks Gavin.

Is a signing package ready?

Ron

From: Gavin He
Sent: June-27-17 17:08
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Sure, it has been fixed.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 4:39 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Thanks Gavin.

It may just be the Frost computer, but the table at the bottom of p.2 seems to be broken up onto p.3. Could you reformat so it's all on p.2.

Thanks,
Ron

From: Gavin He
Sent: June 27, 2017 4:34 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir

Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

We are good with your edits. Attached is the clean copy. In addition, we made corresponding changes in the memos too.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:14 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Hi,

Some suggested edits.

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

From: Gavin He
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 5:07:39 PM
Attachments: 01 - IESO-OFA - FHP Line of Credit Facility_MinDirective - BN v3.docx

---

Hi Ron,

Sure, it has been fixed.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 4:39 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Thanks Gavin.

It may just be the Frost computer, but the table at the bottom of p.2 seems to be broken up onto p.3. Could you reformat so it's all on p.2.

Thanks,
Ron

From: Gavin He
Sent: June 27, 2017 4:34 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

We are good with your edits. Attached is the clean copy. In addition, we made corresponding changes in the memos too.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:14 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Hi,

Some suggested edits.

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

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, consistent with the spread for current and past OFA credit facilities for the IESO.
- 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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.
- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred Global Adjustment amount.

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 right to recover the deferred amounts in the future) 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.
- IESO is expected to need short-term financing to manage initial and ongoing monthly 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, which could result in longer than planned IESO draws on the credit facility.

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA-IESO Facility	**New Proposed OFA-IESO 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

From: Gavin He
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 4:35:00 PM
Attachments: 01 - IESO-OFA - FHP Line of Credit Facility_MinDirective - BN v3.docx
02 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo CEO-DM_v2.doc
03 - IESO-OFA - FHP Line of Credit Facility_MinDirective - Memo DM-Min_v2.doc

---

Hi Ron,

We are good with your edits. Attached is the clean copy. In addition, we made corresponding changes in the memos too.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:14 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Hi,

Some suggested edits.

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

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, consistent with the spread for current and past OFA credit facilities for the IESO.
- 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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.
- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred Global Adjustment amount.

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 right to recover the deferred amounts in the future) 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.

- IESO is expected to need short-term financing to manage initial and ongoing monthly 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, which could result in longer than planned IESO draws on the credit facility.

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA-IESO Facility	**New Proposed OFA-IESO 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

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

Ontario

June 2~~5~~8, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Minister's Directive to OFA to provide IESO a Credit Facility Extension**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister direct the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

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 right to recover the deferred amounts in the future~~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 monthly IESO cash flow requirement timing differences.

…2

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the ~~replacement of the current~~ RPP ~~by the new FHP~~.

Attached is a briefing note for your consideration, as well as a Lending Directive for the Minister's signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province's cost of funds plus a twenty-five basis point spread which is consistent with the spread for current and past OFA credit facilities for the IESO, and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Directive to OFA to provide OPA a Credit Facility Extension**

Attached for your review and consideration is a Minister's Directive to the Ontario Financing Authority (OFA) to provide the Independent Electricity System Operator (IESO) a revolving credit facility in an amount of up to $2 billion. The credit facility is being requested by the IESO and will be used to support its role in the implementation and administration as prescribed under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act").

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 right to recover the deferred amounts in the future~~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 monthly IESO cash flow requirement timing differences.

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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the ~~replacement of the current~~ RPP ~~by the new FHP~~.

Attached is a briefing note for your consideration, as well as a Lending Directive for the your signature that would direct OFA to provide a $2 billion revolving credit facility to the IESO, with a maturity date of September 30, 2022, an interest rate of Province's cost of funds plus a twenty-five basis point spread which is consistent with the spread for current and past OFA credit facilities for the IESO, and any other terms the OFA deems appropriate.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

From:	Gavin He
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir
Subject:	RE: IESO and OFA - FHP Line of Credit Facility Directive
Date:	Tuesday, June 27, 2017 5:36:36 PM

Hi Ron,

I am doing the blue sheet now and will bring the package over to you shortly.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 5:36 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Thanks Gavin.

Is a signing package ready?

Ron

From: Gavin He
Sent: June-27-17 17:08
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Sure, it has been fixed.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 4:39 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Thanks Gavin.

It may just be the Frost computer, but the table at the bottom of p.2 seems to be broken up onto p.3. Could you reformat so it's all on p.2.

Thanks,
Ron

From: Gavin He
Sent: June 27, 2017 4:34 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

We are good with your edits. Attached is the clean copy. In addition, we made corresponding changes in the memos too.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:14 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Hi,

Some suggested edits.

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 3:49:29 PM

Hi Ron,

I think OFA Legal is suggesting that the risk of further delay and things falling apart does not justify making edits on OFA's end. If you want to force that risk, however small, then I will just put the edits in there and tell them this is how it is.

I will do that now.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September

works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 3:38:48 PM

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with

the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>

Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	John Kim
To:	Ronald Kwan
Cc:	Usman Zahid
Subject:	RE: IESO credit facility - Intercept Letter
Date:	Tuesday, October 24, 2017 11:41:54 AM

Hi Ron,

I don't see a problem as it establishes clarity on the issue, not relevant for the OFA Lending Policy, according to OFA Legal. The policy of requiring the intercept applies to only one parent ministry.

I could be missing something.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 10:47 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Thanks John. I think the last point added will require some discussion.

Ron

From: John Kim
Sent: October-24-17 10:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Fyi

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals

can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 10:47:27 AM

Thanks John. I think the last point added will require some discussion.

Ron

From: John Kim
Sent: October-24-17 10:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Fyi

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,

Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 4:04:47 PM

Hi Ron,

It is fine. Let's take that incremental risk – we had that email from James Strang confirming but it is true that he likely has no authority to bind TBS.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 4:01 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

Unless OFA legal confirms that legal interpretation, I don't see how I can sign it as written (unless TBS separately confirms in writing).

If that can be handled internally (or with TBS), with no editing needing to be circulated to the IESO and Energy, that can work. If not, then the wording would seem to me needs to be edited.

Ron

From: John Kim
Sent: October 24, 2017 3:49 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I think OFA Legal is suggesting that the risk of further delay and things falling apart does not justify making edits on OFA's end. If you want to force that risk, however small, then I will just put the edits in there and tell them this is how it is.

I will do that now.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and

possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

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

Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 2:03:52 PM

Hi Ron,

All done….and they are expecting the next draft of the service agreement on Wednesday so it will be another timeline point.

John

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

It would be good to talk to Anthony first to get a verbal update on the status of IESO discussions with OPG, and note your point on 2 verbally, and then follow up with an email, adding perhaps an "as discussed" to the text.

Ron

From: John Kim
Sent: October-20-17 13:39
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO credit facility

Thanks Ron. Given Legal's advice at the meeting today, I am planning to reply to Anthony as follows:

As for the #2 below, please note that amending the terms/structure of the credit facilities in place at a given point in time would require appropriate approvals, which may involve a requirement to receive a Minister's Directive. As such, at staff level, we would not be able to speak to the outcome of such an approvals process.

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:36 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Suggested edits, as previously discussed.

Ron

From: John Kim
Sent: October-20-17 07:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: IESO credit facility

Pls. See attached.

Begin forwarded message:

> **From:** "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
> **Date:** October 6, 2017 at 10:07:17 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>
> **Cc:** "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
> **Subject: RE: IESO credit facility**
>
> John,
>
> I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).
>
> I am still working to determine who will sign for Energy and I'll let you know shortly.
>
> Tom.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** September 27, 2017 11:50 AM
> **To:** McKinlay, Tom (MAG)
> **Subject:** RE: IESO credit facility
>
> Hi Tom,
>
> Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.
>
> Thanks,
>
> John
>
> ---
>
> **From:** John Kim

Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim
Subject:	RE: IESO credit facility
Date:	Friday, October 20, 2017 1:41:02 PM

Hi John,

It would be good to talk to Anthony first to get a verbal update on the status of IESO discussions with OPG, and note your point on 2 verbally, and then follow up with an email, adding perhaps an "as discussed" to the text.

Ron

From: John Kim
Sent: October-20-17 13:39
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO credit facility

Thanks Ron. Given Legal's advice at the meeting today, I am planning to reply to Anthony as follows:

As for the #2 below, please note that amending the terms/structure of the credit facilities in place at a given point in time would require appropriate approvals, which may involve a requirement to receive a Minister's Directive. As such, at staff level, we would not be able to speak to the outcome of such an approvals process.

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:36 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Suggested edits, as previously discussed.

Ron

From: John Kim
Sent: October-20-17 07:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: IESO credit facility

Pls. See attached.

Begin forwarded message:

From: "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
Date: October 6, 2017 at 10:07:17 AM EDT
To: "Kim, John (OFA)" <John.Kim@ofina.on.ca>
Cc: "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 1:38:43 PM

Thanks Ron. Given Legal's advice at the meeting today, I am planning to reply to Anthony as follows:

As for the #2 below, please note that amending the terms/structure of the credit facilities in place at a given point in time would require appropriate approvals, which may involve a requirement to receive a Minister's Directive. As such, at staff level, we would not be able to speak to the outcome of such an approvals process.

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:36 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Suggested edits, as previously discussed.

Ron

From: John Kim
Sent: October-20-17 07:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: IESO credit facility

Pls. See attached.

Begin forwarded message:

> **From:** "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
> **Date:** October 6, 2017 at 10:07:17 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>
> **Cc:** "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
> **Subject: RE: IESO credit facility**
>
> John,
>
> I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).
>
> I am still working to determine who will sign for Energy and I'll let you

know shortly.

Tom.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch

Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 1:35:31 PM
Attachments: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup5.docx

---

Hi John,

Suggested edits, as previously discussed.

Ron

From: John Kim
Sent: October-20-17 07:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: IESO credit facility

Pls. See attached.

Begin forwarded message:

> **From:** "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
> **Date:** October 6, 2017 at 10:07:17 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>
> **Cc:** "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
> **Subject: RE: IESO credit facility**
>
> John,
>
> I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).
>
> I am still working to determine who will sign for Energy and I'll let you know shortly.
>
> Tom.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** September 27, 2017 11:50 AM
> **To:** McKinlay, Tom (MAG)
> **Subject:** RE: IESO credit facility
>
> Hi Tom,
>
> Just following up on this one. Let me know pls. if it would be timely for us to follow up

with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

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

Commented [ESP1]: Defer to Corporate?

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 the Ministry of Energy ("ENERGY~~MOE~~") 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~~MOE~~ 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~~MOE~~ agree that in the event that the Legislature appropriates any funds for payment 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").
    - Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay 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~~MOE~~ and seek

DRAFT

ENERGY~~MOE~~'s support in getting the IESO to pay the amounts owing within a reasonable cure period.

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, ENERGY~~MOE~~ will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by ENERGY~~MOE~~. Upon request, ENERGY~~MOE~~ will provide similar information to the Minister of Finance.

- ENERGY~~MOE~~ 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 to the IESO, ENERGY~~MOE~~ 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.

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.

DRAFT

From:	Ronald Kwan
To:	John Kim
Subject:	RE: IESO credit facility
Date:	Tuesday, September 26, 2017 4:35:29 PM

Thanks John.

Ron

From: John Kim
Sent: September-26-17 16:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO credit facility

Fyi.

From: Lisa Stein
Sent: Tuesday, September 26, 2017 4:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Yes, your understanding is correct. There are currently no "exceptions" to or specific "carve outs" from the intercept requirement in the Policy and I agree with Toby. I was trying to address the question you had raised in your earlier e-mail.

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 4:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Lisa, Toby,

I want to clarify that based on the approach we are moving forward with, the understanding of the OFA Lending Policy should be such that where there are no appropriation by Legislature, there is nothing contemplated by the OFA Lending Policy to intercept. Some of us in CEFD are a bit concerned about the wording 'carve-outs' and 'perhaps' below. I think Toby referred to 'carve-outs' to refer to exceptions to what is subject to the intercept. With the draft letter agreement, we are

taking a position that there is nothing to intercept and that we are agreeing to put the intercept clause in as in the future there could be appropriations by Legislature for the IESO at which point, it would become necessary in the future which would be a prudent thing to have.

I was getting Ron in the loop as potentially ready to manage the process with OPG.

Let me know pls. if I am off base on any of the above.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under "Conditions Precedent", the OFA Lending Policy provides that the OFA must ensure that it has an "appropriate" intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for 'carve-outs' in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 11:24 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.

- Intercepting these program specific payments, which are appropriated by the Legislature for

the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, September 26, 2017 11:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P.

Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.
We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello

Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in

place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is

strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	John Kim
Subject:	RE: IESO credit facility
Date:	Friday, October 20, 2017 2:10:42 PM

Thanks John.

Ron

From: John Kim
Sent: October-20-17 14:04
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Ron,

All done….and they are expecting the next draft of the service agreement on Wednesday so it will be another timeline point.

John

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:41 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

It would be good to talk to Anthony first to get a verbal update on the status of IESO discussions with OPG, and note your point on 2 verbally, and then follow up with an email, adding perhaps an "as discussed" to the text.

Ron

From: John Kim
Sent: October-20-17 13:39
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO credit facility

Thanks Ron. Given Legal's advice at the meeting today, I am planning to reply to Anthony as follows:

As for the #2 below, please note that amending the terms/structure of the credit facilities in place at a given point in time would require appropriate approvals, which may involve a requirement to receive a Minister's Directive. As such, at staff level, we would not be able to speak to the outcome of such an approvals process.

From: Ronald Kwan
Sent: Friday, October 20, 2017 1:36 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Suggested edits, as previously discussed.

Ron

From: John Kim
Sent: October-20-17 07:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: IESO credit facility

Pls. See attached.

Begin forwarded message:

> **From:** "McKinlay, Tom (MAG)" <Tom.McKinlay@ontario.ca>
> **Date:** October 6, 2017 at 10:07:17 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>
> **Cc:** "Thouin, Alena (ENERGY)" <Alena.Thouin@ontario.ca>
> **Subject: RE: IESO credit facility**
>
> John,
>
> I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).
>
> I am still working to determine who will sign for Energy and I'll let you know shortly.
>
> Tom.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** September 27, 2017 11:50 AM
> **To:** McKinlay, Tom (MAG)
> **Subject:** RE: IESO credit facility
>
> Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies….this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Subject: RE: IESO guarantee
Date: Friday, December 01, 2017 4:44:37 PM

Hi Ron,

Tim replied to my email via a phone call.

Tim is indicating that the IESO and Energy may have already drafted the agreement (insolvency guarantee). He left it vague on how far they have gone.

On the funding of the interest costs and fees….they are planning to use the OFA facility for it for the moratorium period. My question is – are we okay with that planned course of action? The way Tim explains it the cash for OPG Trust to pay the cost of borrowing will be coming from OFA facilities, via IESO.

Thanks,

John

From: Ronald Kwan
Sent: Friday, December 01, 2017 4:23 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO guarantee

From: Gadi Mayman
Sent: December-01-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Bonnie Lemcke <Bonnie.Lemcke@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: IESO guarantee

Hadn't heard. Definitely need OPCD to weigh in on this, as I don't know what it does for the accounting. I'm also copying Bonnie, because I'd like to know how the rating agencies would deal with this.

I don't think that we provide this sort of guarantee to any other agency, so there's a precedent issue that I'm not sure I'm comfortable with, too.

Gadi

On Dec 1, 2017, at 2:16 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

Hi Gadi, Mike, Ken,

A heads up on something I just heard about, should you not yet be aware.

We'll try and find out more on the basis for the request (perhaps as it relates to the security agreement with OPG etc.), and see if Energy has looped in OPCD for any accounting considerations.

Ron

From: John Kim
Sent: December-01-17 13:33
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO guarantee

Fyi

From: Christie, Tim (ENERGY) [mailto:Tim.Christie@ontario.ca]
Sent: Friday, December 01, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: IESO guarantee

Hi John, are you aware of a request by the IESO for a provincial guarantee against insolvency? It's something they requested of us, but I don't think we would have the authority to agree to this – it would have to go through OFA/TB.

Tim

From: Ronald Kwan
To: John Kim
Subject: RE: IESO guarantee
Date: Friday, December 01, 2017 5:20:14 PM

Hi John,

Let's do a brief note on the IESO plan to use the OFA facility. We can circulate it to Gadi, Mike and Ken to see if they have any concerns. From a policy perspective, I think it conforms with facilitating the FHP. However, I'd want any views on whether there are concerns on how the credit facility agreement is written, or accounting issues.

Ron

From: John Kim
Sent: December-01-17 16:45
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO guarantee

Hi Ron,

Tim replied to my email via a phone call.

Tim is indicating that the IESO and Energy may have already drafted the agreement (insolvency guarantee). He left it vague on how far they have gone.

On the funding of the interest costs and fees….they are planning to use the OFA facility for it for the moratorium period. My question is – are we okay with that planned course of action? The way Tim explains it the cash for OPG Trust to pay the cost of borrowing will be coming from OFA facilities, via IESO.

Thanks,

John

From: Ronald Kwan
Sent: Friday, December 01, 2017 4:23 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO guarantee

From: Gadi Mayman
Sent: December-01-17 14:41
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Bonnie Lemcke <Bonnie.Lemcke@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: IESO guarantee

Hadn't heard. Definitely need OPCD to weigh in on this, as I don't know what it does for the accounting. I'm also copying Bonnie, because I'd like to know how the rating agencies would deal with this.

I don't think that we provide this sort of guarantee to any other agency, so there's a precedent issue that I'm not sure I'm comfortable with, too.

Gadi

On Dec 1, 2017, at 2:16 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Gadi, Mike, Ken,
>
> A heads up on something I just heard about, should you not yet be aware.
>
> We'll try and find out more on the basis for the request (perhaps as it relates to the security agreement with OPG etc.), and see if Energy has looped in OPCD for any accounting considerations.
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** December-01-17 13:33
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Subject:** FW: IESO guarantee
>
> Fyi
>
> ---
>
> **From:** Christie, Tim (ENERGY) [mailto:Tim.Christie@ontario.ca]
> **Sent:** Friday, December 01, 2017 12:15 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** IESO guarantee
>
> Hi John, are you aware of a request by the IESO for a provincial guarantee against insolvency? It's something they requested of us, but I don't think we would have the authority to agree to this – it would have to go through OFA/TB.
>
> Tim

From: John Kim
To: Ronald Kwan
Subject: RE: IESO-OEFC Note_v3Clean.docx
Date: Tuesday, November 21, 2017 7:43:02 AM

Hi Ron,

So this has been an interesting exercise. In CEFD, we understood why they were putting in the changes to the Permitted Liens but Documentation had questions despite having done for both OFA facilities. I have let IESO know that for any structural changes/major requests that they need to come to us.

Thanks,

John

From: John Kim
Sent: Tuesday, November 21, 2017 7:24 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Works for me. Mike, the signator (sp), has not yet given the okay but I believe this is almost there.

Thanks,

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 11:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Hi John,

Thanks. How about this?

Ron

From: John Kim
Sent: November-20-17 4:02 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Thanks Ron. Reflected your comments to CMD Operations'.

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

From: John Kim
To: Ronald Kwan
Subject: RE: IESO-OEFC Note_v3Clean.docx
Date: Tuesday, November 21, 2017 7:24:27 AM

Works for me. Mike, the signator (sp), has not yet given the okay but I believe this is almost there.

Thanks,

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 11:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Hi John,

Thanks. How about this?

Ron

From: John Kim
Sent: November-20-17 4:02 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Thanks Ron. Reflected your comments to CMD Operations'.

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM

To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

From:	Ronald Kwan
To:	John Kim
Subject:	RE: IESO-OEFC Note_v3Clean.docx
Date:	Monday, November 20, 2017 11:35:16 PM
Attachments:	IESO-OEFC Note_v5_Clean.docx IESO-OEFC Note_v5.docx

Hi John,

Thanks. How about this?

Ron

From: John Kim
Sent: November-20-17 4:02 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Thanks Ron. Reflected your comments to CMD Operations'.

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

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."*

- 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.
  - 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.

CONSIDERATIONS

- 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-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.

- 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.

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 exisiting 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 20, 2017

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 ~~security~~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."

Commented [JK1]: Or vice versa, their agreements with the OEFC but this is fine.

- 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.
  - 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.

CONSIDERATIONS

- 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-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.

- 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.

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 exisiting 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 20, 2017

From: John Kim
To: Ronald Kwan
Subject: RE: IESO-OEFC Note_v3Clean.docx
Date: Monday, November 20, 2017 4:01:38 PM
Attachments: IESO-OEFC Note_v4.docx

Thanks Ron. Reflected your comments to CMD Operations'.

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

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

- Under t~~T~~he FHP, ~~requires~~ the IESO and Ontario Power Generation (OPG) are interacting~~to work together~~ to refinance ~~Ontario's clean energy investments~~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 ~~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 agreement~~s~~. 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 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 ~~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*.~~

- 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~~n~~-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.

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [JK1]: Or vice versa, their agreements with the OEFC but this is fine.

Commented [JK2]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [OK3R2]: 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.

Formatted: Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: +Body (Calibri), 11 pt

Formatted: Indent: Left: 0.5", No bullets or numbering

- ~~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.]~~

- 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 [JK4]: Given that we are moving towards a consensus, the rest of the sentence is moot.

Formatted: Font: +Body (Calibri), 11 pt

Formatted: Indent: Left: 0.5", No bullets or numbering

Commented [JK5]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [OK6R5]: 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 [OK7]: 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 [OK8]: 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 exisiting 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 ~~15~~20, 2017

From: Gavin He
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO-OEFC Note_v3Clean.docx
Date: Monday, December 11, 2017 9:56:51 AM
Attachments: $160M revolving credit - amending agreement no.7(Executed).pdf
$120M Note - amending agreement no.7(Executed).pdf

Hi Ron,

FYI – The amendments to those two OEFC credit facilities were executed last week.

Regards,
Gavin He

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

AMENDING AGREEMENT NO. 7

This Amending Agreement is effective as of the 5th day of December, 2017.

BETWEEN: **INDEPENDENT ELECTRICITY SYSTEM OPERATOR ("IESO")**

as Borrower

AND: **ONTARIO ELECTRICITY FINANCIAL CORPORATION ("OEFC")**

as Lender

WHEREAS IESO and OEFC entered into a Revolving Credit Facility Agreement dated April 23, 2010, as amended by Amending Agreement No.1 dated July 21, 2010, Amending Agreement No. 2 dated October 14, 2011, Amending Agreement No. 3 dated April 30, 2013, Amending Agreement No. 4 dated April 30, 2014, Amending Agreement No. 5 dated December 19, 2014 and Amending Agreement No. 6 dated April 30, 2017 (collectively the "Agreement") pursuant to which OEFC agreed to provide a revolving credit facility to IESO in the principal amount of up to CDN $160 million;

AND WHEREAS the *Ontario Fair Hydro Plan Act, 2017* came into force on June 1, 2017;

AND WHEREAS at the request of the IESO the parties now wish to amend the Agreement to accommodate IESO's role and obligations under the *Ontario Fair Hydro Plan Act, 2017*;

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

1. The following definitions are added to Section 1.1 (Definitions) of the Agreement:

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

   "**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.

2. The definition of "Ontario's Fair Hydro Plan" is deleted in its entirety.

3. The definition of the term "Permitted Liens" in Section 1.1 (Definitions) of the Agreement is amended by deleting the word "and" at the end of paragraph (j); deleting

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

3. Subsection 2.2(2) of the Agreement is deleted and replaced by the following:

(2) The Note shall at all times rank *pari passu* with all other unsecured Senior Debt of the IESO, subject to the existence of any Liens that secure Indebtedness as permitted by subsections 3.8 (a) through (f) hereof.

4. Delete the paragraph following the heading "Section 3.7 Other Indebtedness" and replace with the words "Intentionally Left Blank".

IN ALL OTHER RESPECTS, the Agreement is confirmed by the parties.

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name: Kimberly Marshall
Title: Vice President, Corporate Services; Chief Financial Officer; and Treasurer

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____
Name: Michael D. Manning
Title: Executive Director and Chief Investment Officer

AMENDING AGREEMENT NO. 7

This Amending Agreement is made as of the 5th day of December, 2017 between:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR ("IESO")

and

ONTARIO ELECTRICITY FINANCIAL CORPORATION ("OEFC")

WHEREAS IESO and OEFC have entered into an agreement providing for the Issuance of a Note dated April 1, 1999 (the "Original Agreement");

AND WHEREAS pursuant to amending agreements dated March 23, 2000, April 23, 2009, May 1, 2011, May 1, 2013, April 30, 2014 and April 30, 2017 the parties amended the Original Agreement (as so amended, the "Agreement");

AND WHEREAS the *Ontario Fair Hydro Plan Act, 2017* came into force on June 1, 2017;

AND WHEREAS at the request of the IESO the parties now wish to amend the Agreement to accommodate IESO's role and obligations under the *Ontario Fair Hydro Plan Act*, 2017;

NOW THEREFORE in consideration of the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged by each party), the parties agree as follows:

1. The following definitions are added to Section 1.1 (Definitions) of the Agreement:

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

   "**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.

2. The definition of "Permitted Liens" in Section 1.1 (Definitions) of the Agreement is amended by deleting the word "and" at the end of paragraph (j); deleting the "." at the end of paragraph (k) and replacing it with "; and"; and adding the following new paragraph (l):

   (l) 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.

3. Subsection 2.2(2) of the Agreement is deleted and replaced by the following:

(2) The Note shall at all times rank *pari passu* with all other unsecured Senior Debt of the IESO, subject to the existence of any Liens that secure Indebtedness as permitted by subsections 3.8 (a) through (f) hereof.

4. Delete the paragraph following the heading "Section 3.7 Other Indebtedness" and replace with the words "Intentionally Left Blank".

IN ALL OTHER RESPECTS, the Agreement is confirmed by the parties.

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name: Kimberly Marshall
Title: Vice President, Corporate Services; Chief Financial Officer; and Treasurer

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____
Name: Michael D. Manning
Title: Executive Director and Chief Investment Officer

From: Ronald Kwan
To: John Kim
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx
Date: Tuesday, November 21, 2017 5:12:30 PM
Attachments: IESO-OEFC Note_v7_Markup2.docx

Hi John,

How about this?

Ron

From: John Kim
Sent: November-21-17 15:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO-OEFC Note_v3Clean_Markup.docx

Hi Ron,

CMD-Documentation responded. Pls. have a look.

Thanks,

John

From: Opal Kandelas
Sent: Tuesday, November 21, 2017 3:49 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John,

The note looks good. I've made a couple of tweaks.
Thanks,
Opal

From: John Kim
Sent: Tuesday, November 21, 2017 2:47 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi Mike, Opal,

I've updated the note further, as discussed with Mike, to clarify. I have comments in two areas. Pls. let me know if you have any comments on them or if I am mistaken.

Thanks,

John

From: John Kim
Sent: Monday, November 20, 2017 4:02 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Thanks Opal…reflected some of Ron's comments but stayed with your edits where there were conflicts.

Mike, let me know pls. if you're okay with the note and the recommendation.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John, Mike,

In the interest of time, I'm sending comments on the note to you both.

Thanks,
Opal.

From: John Kim
Sent: Monday, November 20, 2017 2:39 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Thanks Opal. Ron hasn't reviewed it yet. Hoping to build a consensus.

From: Opal Kandelas
Sent: Monday, November 20, 2017 2:20 PM

To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean_Markup.docx

Hi John,

I'm reviewing the note. Be back to you shortly.

Thanks,
Opal

From: John Kim
Sent: Monday, November 20, 2017 12:42 PM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean_Markup.docx

Hi Opal,

Let me know if you're OK with this version. I put CMD – Operations in square bracket pending your review.

Thanks,

John

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.
  - The security agreement is not limited to the Clean Energy Adjustment funds collected by the IESO only.

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

- 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.
  - 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.

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.

- The extent of this risk is subject to uncertainty at this time, given that the regulations that ~~determine~~govern the payments related to the Fair Allocation Amount ~~payable~~ in each period, and how that relates to the obligations to the Financing Entity, are still under development.

Commented [RK2]: Are they? Or "have not yet been put into practice"?

- 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~~y~~ are "subject to such other terms as OEFC deams appropriate~~the terms set out in the OEFC Agreements.~~ Therefore, an amendment for permitted liens can be done under the existing ~~this is not seen as a change to the~~ directives, and a new or revised directives from the Minister of Finance are not deemed necessary. This would be~~was~~ consistent with the approach when ~~amending~~ the pre-existing OFA-IESO credit facility agreement was amended~~s~~ for permited liens on November 6, 2017.

Commented [JK3]: 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 exisiting 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 2~~1~~0, 2017

From: Ronald Kwan
To: John Kim
Subject: RE: IESO
Date: Monday, November 27, 2017 4:19:20 PM

Hi John,

I'm fine so long as CMD is, and OFA Legal. Not sure if we have a protocol or normal practice or concerns on sharing such documents.

Ron

From: John Kim
Sent: November-27-17 16:18
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO

Hi Ron,

Would you have any issues on our end? I am happy to defer this to CMD and CMD seems to be open to the idea of having IESO share. As long as TD treats it as confidential, not sure if we would have any issue from the policy side of things.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, November 21, 2017 10:47 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: IESO

Please move forward and seek the necessary approvals. TD wants to read the $2B agreement to ensure IESO has FH liquidity during the 4 years.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: November 20, 2017 5:17 PM
To: Anthony Martinello
Cc: Victor Buza; Gavin He; William Tan
Subject: RE: IESO

Hi Anthony,

I think the steps we would take to allow it, if at all, could be quite onerous and time-consuming. Are there any specific concern they have that we should be able to address without actually letting them see the agreement?

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, November 20, 2017 5:05 PM
To: John Kim <John.Kim@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO

John, William,

TD Bank has asked to review the $2B Fair Hydro credit facility executed between IESO and OFA.

TD wants to gain comfort (themselves) that the credit facility is going to support the IESO's fair hydro transactions during the next 4 years.

I have verbally assured them of the above, but they wish to review themselves.

Let me know if I may share and TD will treat the document as confidential.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Salman Qadir; John Kim; Gavin He
Subject:	RE: IESO_OFA FEP 2017 Credit Letter
Date:	Thursday, May 18, 2017 3:01:52 PM

Ron,

Energy is going to cabinet twice on the 14th and on June 27th for the regs. They (Tim C.) agree it makes sense to go on the same date. We will need to check to see if they can proceed in one cabinet package. Minister of Finance has to recommend the IESO OIC.

Bruno

From: Gavin He
Sent: Thursday, May 18, 2017 2:09 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron,

I will connect with DMO on this item.

Regards,
Gavin He

From: Ronald Kwan
Sent: Thursday, May 18, 2017 2:06 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Thanks Bruno.

Gavin, is DMO aware of the targeted timelines?

Ron

From: Bruno Amara
Sent: May-18-17 13:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>

Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron

We are having been working with Operations and Legal and I, OIC drafting is well on its way. We have also contacted cabinet office and Energy on the timing. We thought that it would make sense that this OIC proceed with the FHP leg and regs. CO was generally in agreement. There is a date on June 27, but there may also be an earlier date TBD. I believe the earlier date would be direct to cabinet. Our next step is to get back to Energy to confirm their timelines and that we will package this on same date.

Bruno

From: Ronald Kwan
Sent: Thursday, May 18, 2017 1:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi John,

How is drafting the OIC LRC package coming along?

Gavin, when are the available LRC dates? Can we get this into the system, with a target LRC date?

Does this submission have to go through any other Cabinet committees / TB?

Thanks,
Ron

From: John Kim
Sent: May-12-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: IESO_OFA FEP 2017 Credit Letter

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>;

Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

"We are what we repeatedly do. ***Excellence****, therefore, is not an act but a* ***habit****".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Gavin He
To: Ronald Kwan
Cc: Salman Qadir; Bruno Amara; John Kim
Subject: RE: IESO_OFA FEP 2017 Credit Letter
Date: Thursday, May 18, 2017 2:09:23 PM

Hi Ron,

I will connect with DMO on this item.

Regards,
Gavin He

From: Ronald Kwan
Sent: Thursday, May 18, 2017 2:06 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Thanks Bruno.

Gavin, is DMO aware of the targeted timelines?

Ron

From: Bruno Amara
Sent: May-18-17 13:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron

We are having been working with Operations and Legal and I, OIC drafting is well on its way. We have also contacted cabinet office and Energy on the timing. We thought that it would make sense that this OIC proceed with the FHP leg and regs. CO was generally in agreement. There is a date on June 27, but there may also be an earlier date TBD. I believe the earlier date would be direct to cabinet. Our next step is to get back to Energy to confirm their timelines and that we will package this on same date.

Bruno

From: Ronald Kwan
Sent: Thursday, May 18, 2017 1:35 PM

To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi John,

How is drafting the OIC LRC package coming along?

Gavin, when are the available LRC dates? Can we get this into the system, with a target LRC date?

Does this submission have to go through any other Cabinet committees / TB?

Thanks,
Ron

From: John Kim
Sent: May-12-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: IESO_OFA FEP 2017 Credit Letter

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

"We are what we repeatedly do. ***Excellence****, therefore, is not an act but a* ***habit****".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	Bruno Amara; John Kim
Cc:	Gavin He; Salman Qadir
Subject:	RE: IESO_OFA FEP 2017 Credit Letter
Date:	Thursday, May 18, 2017 2:05:57 PM

Thanks Bruno.

Gavin, is DMO aware of the targeted timelines?

Ron

From: Bruno Amara
Sent: May-18-17 13:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron

We are having been working with Operations and Legal and I, OIC drafting is well on its way. We have also contacted cabinet office and Energy on the timing. We thought that it would make sense that this OIC proceed with the FHP leg and regs. CO was generally in agreement. There is a date on June 27, but there may also be an earlier date TBD. I believe the earlier date would be direct to cabinet. Our next step is to get back to Energy to confirm their timelines and that we will package this on same date.

Bruno

From: Ronald Kwan
Sent: Thursday, May 18, 2017 1:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi John,

How is drafting the OIC LRC package coming along?

Gavin, when are the available LRC dates? Can we get this into the system, with a target LRC date?

Does this submission have to go through any other Cabinet committees / TB?

Thanks,
Ron

From: John Kim
Sent: May-12-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: IESO_OFA FEP 2017 Credit Letter

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Bruno Amara
To: Ronald Kwan; John Kim
Cc: Gavin He; Salman Qadir
Subject: RE: IESO_OFA FEP 2017 Credit Letter
Date: Thursday, May 18, 2017 1:46:48 PM

Hi Ron

We are having been working with Operations and Legal and I, OIC drafting is well on its way. We have also contacted cabinet office and Energy on the timing. We thought that it would make sense that this OIC proceed with the FHP leg and regs. CO was generally in agreement. There is a date on June 27, but there may also be an earlier date TBD. I believe the earlier date would be direct to cabinet. Our next step is to get back to Energy to confirm their timelines and that we will package this on same date.

Bruno

From: Ronald Kwan
Sent: Thursday, May 18, 2017 1:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi John,

How is drafting the OIC LRC package coming along?

Gavin, when are the available LRC dates? Can we get this into the system, with a target LRC date?

Does this submission have to go through any other Cabinet committees / TB?

Thanks,
Ron

From: John Kim
Sent: May-12-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: IESO_OFA FEP 2017 Credit Letter

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Gavin He
To: Bruno Amara; Ronald Kwan
Cc: Salman Qadir; John Kim
Subject: RE: IESO_OFA FEP 2017 Credit Letter
Date: Thursday, May 18, 2017 3:03:25 PM

Hi all,

I also talked to Jonathan about this as well but haven't heard anything back from him yet. I will keep you posted.

Regards,
Gavin He

From: Bruno Amara
Sent: Thursday, May 18, 2017 3:02 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Ron,

Energy is going to cabinet twice on the 14th and on June 27th for the regs. They (Tim C.) agree it makes sense to go on the same date. We will need to check to see if they can proceed in one cabinet package. Minister of Finance has to recommend the IESO OIC.

Bruno

From: Gavin He
Sent: Thursday, May 18, 2017 2:09 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron,

I will connect with DMO on this item.

Regards,
Gavin He

From: Ronald Kwan
Sent: Thursday, May 18, 2017 2:06 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Thanks Bruno.

Gavin, is DMO aware of the targeted timelines?

Ron

From: Bruno Amara
Sent: May-18-17 13:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi Ron

We are having been working with Operations and Legal and I, OIC drafting is well on its way. We have also contacted cabinet office and Energy on the timing. We thought that it would make sense that this OIC proceed with the FHP leg and regs. CO was generally in agreement. There is a date on June 27, but there may also be an earlier date TBD. I believe the earlier date would be direct to cabinet. Our next step is to get back to Energy to confirm their timelines and that we will package this on same date.

Bruno

From: Ronald Kwan
Sent: Thursday, May 18, 2017 1:35 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO_OFA FEP 2017 Credit Letter

Hi John,

How is drafting the OIC LRC package coming along?

Gavin, when are the available LRC dates? Can we get this into the system, with a target LRC date?

Does this submission have to go through any other Cabinet committees / TB?

Thanks,

Ron

From: John Kim
Sent: May-12-17 14:14
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: FW: IESO_OFA FEP 2017 Credit Letter

Fyi. We will keep working on the setup.

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: Friday, May 12, 2017 2:08 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*
.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ken Kandeepan
To:	"Anthony Martinello"
Cc:	John Psinas; John Kim; Ronald Kwan
Subject:	RE: IESO_OFA FHP 2017 Credit Letter
Date:	Monday, May 15, 2017 11:10:59 AM

Thanks Anthony, Gadi did pass it on to us, I believe the decision is that the new credit facility will be extended by the OFA not the OEFC.

Thanks

Ken K

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 11:09 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: IESO_OFA FHP 2017 Credit Letter

fyi

From: Georgia Ritchie-Wust
Sent: May 12, 2017 2:08 PM
To: gadi.mayman@ofina.on.ca; mike.manning@ofina.on.ca; Salman.Qadir@ofina.on.ca
Cc: Anthony Martinello; Kim Marshall
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] | LinkedIn: saveONenergy[linkedin.com]

Please consider our environmental responsibility before printing this email.

"We are what we repeatedly do. ***Excellence****, therefore, is not an act but a* ***habit****".*

…..(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Malle Hanslep (MOF); Ronald Kwan
Cc: Tobias P. Whitfield (MOF); Bruno Amara
Subject: RE: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 10:53:29 AM

Hi Ron, Malle,

In terms of the timeline of whether it would be possible to bring forward the s28 approval at the briefing next week. Given the draft stage of Energy's materials provided this morning, I am not sure the timeline would be workable. A lot would depend on Energy's provision of the full package.

Malle, Toby, what is your assessment given where things are at the moment?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, June 22, 2017 10:03 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Indemnities for OPG and IESO

Hi Ronald

I think this needs to be shared with the group at OFA also working on the guarantee

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ronald Kwan
Sent: Thursday, June 22, 2017 09:32
To: Hanslep, Malle (MOF); Kim, John (OFA)
Subject: Indemnities for OPG and IESO

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Malle Hanslep (MOF)
Subject: RE: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 9:33:36 AM

Hi Ron,

We received something this morning. Having a look.

John

-----Original Message-----
From: Ronald Kwan
Sent: Thursday, June 22, 2017 9:32 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Indemnities for OPG and IESO

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

From: John Kim
To: Malle Hanslep (MOF); Ronald Kwan
Cc: Tobias P. Whitfield (MOF); Bruno Amara
Subject: RE: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 11:44:53 AM

Sure, we will share with the staff working on the provincial guarantee.

While I understood that they are separate areas for support/indemnities, will send the material shortly copying you.

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, June 22, 2017 10:55 AM
To: John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Re: Indemnities for OPG and IESO

We think this needs t:o be considered by the group that is considering the provincial guarantee so all are aware.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: John Kim
Sent: Thursday, June 22, 2017 10:53
To: Hanslep, Malle (MOF); Kwan, Ronald (OFA)
Cc: Whitfield, Tobias P. (MOF); Bruno Amara
Subject: RE: Indemnities for OPG and IESO

Hi Ron, Malle,

In terms of the timeline of whether it would be possible to bring forward the s28 approval at the briefing next week. Given the draft stage of Energy's materials provided this morning, I am not sure the timeline would be workable. A lot would depend on Energy's provision of the full package.

Malle, Toby, what is your assessment given where things are at the moment?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, June 22, 2017 10:03 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Indemnities for OPG and IESO

Hi Ronald

I think this needs to be shared with the group at OFA also working on the guarantee

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message

From: Ronald Kwan
Sent: Thursday, June 22, 2017 09:32
To: Hanslep, Malle (MOF); Kim, John (OFA)
Subject: Indemnities for OPG and IESO

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	John Kim
Subject:	RE: Indemnities
Date:	Thursday, June 08, 2017 11:05:26 AM
Attachments:	IESO_OPG Indemnity Questions v5 MOF Legal Comments June 8_Comments.docx

Hi John,

I just did a high level review and made some comments/queries for you and Bruno, and one small suggested edit.

Ron

From: John Kim
Sent: June-08-17 10:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Fwd: Indemnities

FYI

Begin forwarded message:

> **From:** "Whitfield, Tobias P. (MOF)" <Tobias.Whitfield@ontario.ca>
> **Date:** June 8, 2017 at 9:37:26 AM EDT
> **To:** "Kim, John (OFA)" <John.Kim@ofina.on.ca>, "Hanslep, Malle (MOF)" <Malle.Hanslep@ontario.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, "He, Gavin (OFA)" <Gavin.He@ofina.on.ca>, "Elcombe, James (MOF)" <James.Elcombe@ontario.ca>
> **Subject: RE: Indemnities**
>
> Please find attached our comments on the questions list. Please let us know if you would like to discuss further.
>
> Best
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca
> Phone: 416-325-1456
>
> -----Original Message-----
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 7, 2017 8:43 PM
> To: Hanslep, Malle (MOF); Bruno Amara; Whitfield, Tobias P. (MOF)
> Cc: Salman Qadir; He, Gavin (OFA)

Subject: RE: Indemnities

Great, thank you.

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: June-07-17 8:41 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Indemnities

Fyi we have been reviewing your note and adding some comments and will get it to you asap in the morning.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Bruno Amara
Sent: Wednesday, June 7, 2017 16:26
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: Indemnities

Hi Toby

Per our conversation this morning attached are further comments/questions regarding IESO/OPG indemnities which we plan to pass on to the appropriate policy contacts. Could you please review and add any questions that you feel may be relevant. And delete any that you think may be irrelevant for the policy side.

Thanks for your help
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Wednesday, June 07, 2017 10:20 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Indemnities

In preparation for our call in a few minutes, here are a few preliminary responses.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 6, 2017 5:25 PM
To: Whitfield, Tobias P. (MOF)
Cc: Salman Qadir; Kim, John (OFA)
Subject: FW: Indemnities

Hi Toby

I'm guessing you were busy with provincial guarantee material today. But further to my email below, we gathered some questions as we reviewed the IESO/OPG indemnity material (attached). They may not all be for MoF Legal to respond to, but insight on any of these would be appreciated. Let me know when you have time for a discussion.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis Electricity Finance Branch
Corporate and Electricity Finance Division Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>

From: Bruno Amara
Sent: Tuesday, June 06, 2017 11:38 AM
To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: Salman Qadir
<Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: Indemnities

Hi Toby,

Would you be in your office around 1:30 if we call to discuss the IESO/OPG indemnities. John Kim would probably also join in on the call. Please suggest another time if 1:30 is not convenient. I'll send out an invite when we settle on a time.

Thanks
Bruno

Bruno Amara

Sr. Manager, Financial and Regulatory Analysis Electricity Finance Branch
Corporate and Electricity Finance Division Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO/OPG Indemnities

Ministry of Finance Questions

~~1. Does the Ministry of Energy have a Vote Item in place that could accommodate any payment of indemnity, should it arise?~~

Commented [A1]: Is this still a question, or is it being asked through a different channel?

~~2.~~1. Could you please provide specific concerns/scenarios for which OPG/IESO or its directors, officers and employees may become liable ~~for~~and which the indemnity is intended to cover?

- ~~i.e., acting in bad faith examples.~~[NTD: They have provided the examples which are related to financing mostly. Are there any other activities? Who would be most likely to sue: investors, what about other groups?]
- ~~Does indemnity~~ Are there situations where someone might not be acting in good faith ~~-~~and still warrant being covered under the indemnity? In that case, it would seem that the indemnity covers acting in bad faith. Should the indemnity cover actions "in good faith" to carry out the plan?~~. cover anything else other than acting in bad faith?~~
  i. Request for Approval ~~note~~ points out that *Electricity Act, 1998* already protects IESO's ~~and~~ directors, officers, employees or agents ~~certain persons~~ against civil proceedings if they act in good faith in the exercise or performance of powers or duties under the Act, etc. or for any neglect or default in the exercise or performance in good faith of such a power or duty. The~~.~~ Fair Hydro Plan ~~Bill 132~~ has similar language for OPG s. 39(1), ~~albeit~~ but only for employees of OPG (and the Province). Why doesn't the statutory provision also cover OPG's directors and officers of OPG and those of its subs?~~ just for the corp.~~
  ~~i.~~ii. Has consideration been given to providing an indemnity to directors, ~~f~~officers and employees but not to the corporate entities themselves (IESO, OPG and its subs)
- Currently, IESO collects payments from ratepayers via LDCs, so are there any new processes required as a result of implementing FHP? If so, what are new processes need to be in place that will increase IESO's business risk?

2. Should indemnity agreements be tailored to specific circumstances of each company? Currently they appear to be drafted identically.

3. Indemnity would cover "loss of profits" and "loss of opportunity" – Is this too broad?

4. Please provide more detail on the type of insurance that OPG and IESO have to cover these risks? i.e. directors and officers insurance?

5. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?

~~3.~~6. What is the standard that is applied to conducting a reasonable investigation for "due diligence" defence? Is it possible to fail to meet that standard without gross negligence or wilful misconduct?

7. What is the purpose of the provincial waiver of claims – as distinct from the protection provided- by ~~from Province or others through~~ the indemnity?

~~4.~~8. In what situations would a director, officer or employee be acting in a different capacity at the request of the company?

~~5.~~9. Does the indemnity for OPG and its subsidiaries also include SPV (financing entity) and its directors, officers and employees?

- What impact does this have on the SPV being treated as a separate entity to the OPG from an accounting perspective?
- Or does SPV require an indemnity as well and why?
- How does an indemnity for the SPV interact or overlap with the request for a guarantee from the Province in connection with the proposed financing transaction?
- Has consideration been given to limiting the indemnity to directors, officers and employees and not indemnifying the corporations, OPG, IESO, its subs? What are the implications?

~~6.~~10. Have previous Cabinet or TB submissions made reference to the requirement for indemnity agreements for IESO and OPG?

~~7.~~11. It is mentioned that IESO and OPG management view their participation under the OFHP Act as "…outside their typical business activities and corporate mandate". However, the legislation is specifically adding these activities as objects and activities of the companies? Wouldn't their other corporate documents be updated to reflect their role in OFHP? Can't the Minister of Energy provide an updated mandate to OPG and IESO? However, ~~does~~would this potentially affect accounting?

12. The latest draft of the OPG Indemnity Agreement, second recital, now states that the indemnity is for "…risk of liability due to or as a result of the Fair Hydro Plan.". Previously,

Formatted: Highlight

Formatted: Highlight

the indemnity only covered its role in the Fair Hydro Plan. Are there any concerns with this broader language?

~~8.~~13. 9(c) – Should this also reference that certain remedies such as specific performance etc not available against the Crown? Suggest reviewing against representations given in other agreements, etc.

14. Contingent Liability chart may need to be made more consistent with business case.
15. Assume any payments under the indemnity would be made by the Ministry of Energy from its allocations.

~~9. Is the Indemnity Agreement intended to reference the summary in the Contingent Liabilities table? Even if the table is for reference, it should be consistent with the business case, provided by Energy, and the Indemnity Agreement.~~

~~10. For example, comments around indemnity covering activities that may not be seen as in good faith are to be covered under the Indemnity Agreement, as per the business case note. This is not mentioned/referenced in the table [or in the agreement].~~

~~11. Note: Electricity Finance Branch, OFA is proceeding to draft Indemnity approvals on the following basis. Please indicate if you have different assumptions/understanding.~~

- ~~This is an approval under Section 28 of the FAA~~
- ~~Minister of Energy will provide a written request for S. 28 approval to the Minister of Finance~~
- ~~This will not require an OIC for a statutory appropriation and MOE will need to provide confirmation that should any liability arise as a result of the indemnity agreements, MOE will be responsible for funding, within its approved allocation, any payments.~~
    - ~~i. EFB assumes that any request for payments with respect to an indemnity would need to be reviewed as they occur and payments would require a voted appropriation from Ministry of Energy~~

Commented [A2]: Will a markup be sent to identify where there are inconsistencies?

Commented [A3]: Is this agreed to by TBS staff?

From:	John Kim
To:	Ronald Kwan
Subject:	RE: Intercept Exemption Directive
Date:	Wednesday, August 16, 2017 9:46:04 PM
Attachments:	RE draft IESO directive re intercept.msg draft IESO directive re intercept.msg

Some background emails….

From: Ronald Kwan
Sent: August-16-17 9:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: Re: Intercept Exemption Directive

Thanks John.

Ron

On Aug 16, 2017, at 9:31 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> Pls. see attached note on the request and the draft directive OFA Legal has drafted. The second piece is very much work in progress but should be finalized tomorrow. We tried to reflect Malle's feedback to Lisa and also provide an alternate paragraph as a suggestion.
>
> Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package
>
> John
>
> Y. John Kim
> Director, Electricity Finance Branch
> Corporate & Electricity Finance Division
> Ontario Financing Authority
> Ph: 416-212-6996
> Email: john.kim@ofina.on.ca
>
> <01 - IESO-OFA - FHP LoC - Intercept Directive v5.docx>
> <DIRECTIVE Aug 16 V2.docx>

From: Malle Hanslep (MOF) []
To: Lisa Stein [Lisa.Stein@ofina.on.ca]; Kenneth Russell [Kenneth.Russell@ofina.on.ca]
CC: John Kim [John.Kim@ofina.on.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: RE: draft IESO directive re intercept
Date: Wednesday, August 16, 2017 17:29:45

Hi Lisa,

I have been thinking about the wording “funding” and of course the IESO is receiving loans from the OFA and could potentially receive loans from other parts of the government (Ministry of Energy) so I wonder we should rephrase this as the reason for not requiring the intercept. Perhaps in the paragraph that describes the policy we should specifically refer to the wording of the intercept “entitled to deduct from money appropriated by the Leg for payment to IESO” so the nature of the “intercept” is described.

Then perhaps the statement about not receiving “funding” should be modified so that it says IESO does not receive funds in the form of grants or transfer payments from the Ministry of Energy pursuant to its annual appropriations or something along these lines which should be verified by the Ministry of Energy for its accuracy. I don’t know if there is anything additional to add along the lines of “from where does the IESO receive its revenues”? What if in the future IESO for whatever did start receiving such monies or is that not likely? I know that I am beginning to re-think a bit our discussion so perhaps we should limit the directive to the two current loans as things might change in future. Any future loan would require a new directive anyway and then the direction can be specific on that point.

I agree that the statement about IESO not receiving “funding” from the government should be confirmed by the CEFD based on information from the Ministry of Energy (assuming that it is Energy that is responsible for the IESO and would have knowledge of the funding issue) unless it is otherwise clear. I think that it would be useful if the accompanying briefing note elaborated on that point to confirm the source of IESO’s revenues and the associated risk and why the intercept is unnecessary for these loans.

Thanks.

Malle

From: Lisa Stein [mailto:Lisa.Stein@ofina.on.ca]
Sent: August 16, 2017 4:51 PM
To: Russell, Kenneth (OFA); Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Whitfield, Tobias P. (MOF)
Subject: draft IESO directive re intercept
Importance: High

Hi Ken and Malle,

As discussed this afternoon, please see attached draft directive. I would appreciate any comments that you may have. Please note that while I have discussed the content with CEFD, they still need to review. I'm also still awaiting the draft briefing note.

Thank you,

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

From: Lisa Stein []
To: Kenneth Russell [Kenneth.Russell@ofina.on.ca]; Malle Hanslep (MOF) [Malle.Hanslep@ontario.ca]
CC: John Kim [John.Kim@ofina.on.ca]; Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: draft IESO directive re intercept
Date: Wednesday, August 16, 2017 16:50:39
Attachment 1: DIRECTIVE Aug 16.docx

Hi Ken and Malle,

As discussed this afternoon, please see attached draft directive. I would appreciate any comments that you may have. Please note that while I have discussed the content with CEFD, they still need to review. I'm also still awaiting the draft briefing note.

Thank you,

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

The Independent Electricity System Operator ("IESO") is a public body for the purposes of CIPA.

Pursuant to a directive from the Minister dated June 29, 2017, the OFA was directed to provide a revolving credit facility to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet.

As the IESO receives no funding from the Province of Ontario, there is no funding to which the intercept provision applies.

Commented [LS1]: CEFD to review/confirm.

Therefore:

The OFA is not required to include an intercept provision in its OFHP Credit Facility agreement with the IESO, nor in any other unsecured loan agreements with the IESO.

Dated , 2017

Charles Sousa

Minister of Finance

From:	John Kim
To:	Ronald Kwan
Subject:	RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx
Date:	Thursday, September 21, 2017 11:28:34 AM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup3.docx

Thanks Ron. I addressed your comment as I believe it helps.

From: Ronald Kwan
Sent: Thursday, September 21, 2017 11:13 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Hi John,

See attached.

Ron

From: John Kim
Sent: September-20-17 16:46
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Hi Ron,

I don't have any substantive comments on Lisa's draft. The key will be to get Energy onside with the approach. IESO staff were sympathetic to the proposed approach but I understand that Tom McKinley reached out to Toby on this.

Thanks,

John

From: Lisa Stein
Sent: Wednesday, September 20, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Good morning John and Sarah,

Further to our meeting yesterday, please see the attached draft points to be included in a letter agreement from the OFA, addressed to both the IESO and MOE.

Please add in the appropriate details, including addressees and signature lines, and send it back to legal for final review. Happy to discuss.

Thanks,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

I am writing in relation to the Independent Electricity System Operator's (IESO)~~'s~~ request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to $2 billion ~~from the OFA~~ (the "New Credit Facility") to support ~~its~~the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017.*

~~Pursuant to~~Under the OFA Lending Policy, the OFA ~~is~~ require~~d~~ ~~to include~~ an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The 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 ~~from money appropriated by the Legislature for payment to the public body~~. I acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for the IESO [Energy to confirm] and the intent of such a provision is to apply if and when amounts were to be appropriated 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 the Ministry of Energy ("MOE") 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").

- ~~As such, t~~The OFA, the IESO, and MOE 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 MOE agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance ~~is~~ 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").
  - Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

Commented [RK1]: I had thought the earlier discussion contemplated an acknowledgement / confirmation that at this time there are currently no amounts appropriated by the Legislature for the IESO and that these provisions would apply if amounts were appropriated in the future.

Has there been an update to that thinking?

Commented [JK2R1]: Updated.

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Indent: Left: 0.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

DRAFT

- Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with MOE and seek MOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, MOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by MOE. Upon request, MOE will provide similar information to the Minister of Finance.

- MOE 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 to the IESO, MOE 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.

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.

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

DRAFT

From:	Ronald Kwan
To:	John Kim
Subject:	RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx
Date:	Thursday, September 21, 2017 11:13:06 AM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup2.docx

Hi John,

See attached.

Ron

From: John Kim
Sent: September-20-17 16:46
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Hi Ron,

I don't have any substantive comments on Lisa's draft. The key will be to get Energy onside with the approach. IESO staff were sympathetic to the proposed approach but I understand that Tom McKinley reached out to Toby on this.

Thanks,

John

From: Lisa Stein
Sent: Wednesday, September 20, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Good morning John and Sarah,

Further to our meeting yesterday, please see the attached draft points to be included in a letter agreement from the OFA, addressed to both the IESO and MOE.

Please add in the appropriate details, including addressees and signature lines, and send it back to legal for final review. Happy to discuss.

Thanks,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

I am writing in relation to the Independent Electricity System Operator's (IESO)'s request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to $2 billion from the OFA (the "New Credit Facility") to support itsthe IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017.*

Pursuant toUnder the OFA Lending Policy, the OFA is requiresd to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The 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 from money appropriated by the Legislature for payment to the public body.

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 the Ministry of Energy ("MOE") 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").

- As such, tThe OFA, the IESO, and MOE 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 MOE agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance is 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").
    - Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay 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 MOE and seek MOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

Commented [RK1]: I had thought the earlier discussion contemplated an acknowledgement / confirmation that at this time there are currently no amounts appropriated by the Legislature for the IESO and that these provisions would apply if amounts were appropriated in the future.

Has there been an update to that thinking?

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Indent: Left: 0.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

DRAFT

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, MOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by MOE. Upon request, MOE will provide similar information to the Minister of Finance.

- MOE 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 to the IESO, MOE 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.

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.

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 1.75"

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

DRAFT

From: John Kim
To: Ronald Kwan
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx
Date: Wednesday, September 20, 2017 4:45:58 PM
Attachments: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup.docx

---

Hi Ron,

I don't have any substantive comments on Lisa's draft. The key will be to get Energy onside with the approach. IESO staff were sympathetic to the proposed approach but I understand that Tom McKinley reached out to Toby on this.

Thanks,

John

From: Lisa Stein
Sent: Wednesday, September 20, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev.docx

Good morning John and Sarah,

Further to our meeting yesterday, please see the attached draft points to be included in a letter agreement from the OFA, addressed to both the IESO and MOE.

Please add in the appropriate details, including addressees and signature lines, and send it back to legal for final review. Happy to discuss.

Thanks,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

I am writing in relation to the IESO's request for a new revolving credit facility in an amount of up to $2 billion from the OFA (the "New Credit Facility") to support its role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017.*

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The intercept provision allows the Minister of Finance to deduct amounts equal to any amounts the public body fails to pay the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

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 would require~~s~~ the Ministry of Energy ("MOE") 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").

As such, the OFA, the IESO, and MOE 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 MOE agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance ~~is~~ 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").

- Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay 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 MOE and seek MOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, MOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and

DRAFT

expected timing of such payments to be made by MOE. Upon request, MOE will provide similar information to the Minister of Finance.

- MOE 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 to the IESO, MOE 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.

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.

DRAFT

From:	John Kim
To:	Ronald Kwan
Cc:	Gavin He; Usman Zahid
Subject:	RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date:	Wednesday, October 25, 2017 1:56:37 PM
Attachments:	Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 25_v3.docx

Here you go.

Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 1:49 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Ron,

There was a version control issue. We will fix and resend shortly.

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 1:16 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John,

The “confirm” paragraph was dropped altogether, and the new IESO bullet that was at the end was moved up to that part of the letter instead? I likely missed the flag on that change. Is Legal okay with that?

Ron

From: John Kim
Sent: October-25-17 12:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>

Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Fyi.

From: Gavin He
Sent: Wednesday, October 25, 2017 11:03 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

We have put the letter in a letter agreement format as you suggested below. Could you please take a look and let us know if this is the right format?

Thanks,
Gavin He

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:35 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Please send me a final draft for review

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:34 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

You just need to add letter head and signature titles and lines

---

From: John Kim
Sent: Wednesday, October 25, 2017 9:31 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Thanks Lisa.

Could you help us put this in a letter agreement format, with signing lines, etc? We can do the letter head, etc.

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:25 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

I am fine with #1 below. In any event, as previously discussed, OCCSDC is an agent of MOECC, not Energy.

From: John Kim
Sent: Tuesday, October 24, 2017 5:42 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

We can push back saying – we are already saying payments that are not appropriations of Energy is already ruled out. But then there is a risk of delay. If we are specifically ruling out this Ontario Climate Change solutions Deployment Corp. that is a known exemption, is it a problem to include?

From: John Kim
Sent: Tuesday, October 24, 2017 5:25 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

Are we able to work with the #1 below?

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 5:18 PM
To: John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John.

1. The changes made are acceptable except for those made to the penultimate paragraph – please amend this para to read as follows:

> 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.

2. Re the "[Energy to confirm]" comment, we are ok with the sentence as written and don't need to confirm anything further.

3. Kimberly Marshall would sign the Intercept Letter on behalf of IESO.

Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 24, 2017 4:11 PM
To: Tom McKinlay (MAG); Victor Buza
Cc: Lisa Stein; Anthony Martinello; Michael Boll; Gavin He
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Tom, Victor,

I don't yet have final go ahead but we are close so sharing the latest version. Pls. advise if any issue with the attached. Copying Michael at Tom's request.

Also for the square bracketed part [Energy to confirm], pls. advise if any issue with that part as well.

Pls. also let me know who at IESO would sign.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY") confirm and the OFA acknowledge~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO ~~[Energy to confirm]~~ 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.

Commented [ESP1]: Defer to Corporate?

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.

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.

~~**Ontario Financing Authority**~~

~~by:_____~~

~~name: Ronald Kwan~~

~~title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA~~

~~c. Gadi Mayman, Chief Executive Officer, OFA~~

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

Formatted: Underline

Formatted: Justified, Space After: 10.85 pt, Line spacing: Exactly 12.75 pt, Font Alignment: Baseline

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: Bold, Font color: Black

Formatted: List Paragraph

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

Office ontarien de financement
1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7

(416) 325-8000

October 25, 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 ~~OFA,~~ IESO and the Ministry of Energy ("ENERGY") confirm and the OFA acknowledge~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO ~~[Energy to confirm]~~ 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.

Commented [ESP1]: Defer to Corporate?

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.

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.

~~**Ontario Financing Authority**~~

~~by:_____~~

~~name: Ronald Kwan~~

~~title: Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA~~

~~c. Gadi Mayman, Chief Executive Officer, OFA~~

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

Formatted: Underline

Formatted: Justified, Space After: 10.85 pt, Line spacing: Exactly 12.75 pt, Font Alignment: Baseline

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: Bold, Font color: Black

Formatted: List Paragraph

From: Ronald Kwan
To: John Kim
Subject: RE: Intercept provision
Date: Friday, October 13, 2017 5:12:02 PM

Hi John,

Not sure on reading your email to Lisa that Lisa understood what I thought was the issue.

Is it that there is an appropriation to GreenOn, and then GreenON funds an IESO program. Is that right? Check withy the IESO and TBS.

Would OFA Legal consider that not an appropriation (in effect) for the IESO?

Ron

From: John Kim
Sent: October-13-17 16:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Intercept provision

Fyi. Checking now with TBS.

From: Lisa Stein
Sent: Thursday, October 12, 2017 3:31 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: Intercept provision

Hi John,

If I understand your question correctly, the answer is that the Ministry of Environment and Climate Change (MOECCC) is not required to be a party to the FHP credit facility intercept MOU/letter agreement. The letter agreement is intended to be between the "responsible ministry" (in this case Ministry of Energy (MOE)) and the public body (in this case IESO).

The intercept would apply to money appropriated by the Legislature for "payment to the public body". Therefore, money appropriated by the Legislature for payment to a different ministry, a different public body, or to MOE (or an agency of MOE, etc.) for a program *unrelated* to the IESO, would not be caught by the intercept.

I've included an excerpt below which should be helpful in this regard. Please let me know if you would like to discuss further.

Lisa

Excerpt from OFA Lending Policy (emphasis added):

Pursuant to section 23 of the *Capital investment Plan Act* and prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

From: John Kim
Sent: Thursday, October 12, 2017 3:01 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Intercept provision

Hi Sarah, Lisa,

I have a request for a legal interpretation of the OFA Lending Policy.

The OFA Lending Policy as we currently have it, does it provide for a requirement [of the MOU/the letter agreement we have drafted] other than one ministry responsible for the public body? The way I read the policy, I believe there should be one Ministry that provides oversight of the public body.

This morning, at a meeting, IESO representative raised the issue of their managing the government's implementation of Green ON Fund (?). I am presuming that the same type of arrangement applies for this program as the Energy's program, i.e. no appropriation for IESO's operation, and this is TBD but would like to know how implementation of such a program funded by another ministry would factor into what we are looking to do.

The purpose of the question is to entertain whether the MOU/the letter agreement needs to include MOECC or not. I don't think so but would appreciate your assessment.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

From: John Kim
To: Ronald Kwan
Subject: RE: Intercept provision
Date: Friday, October 13, 2017 5:20:24 PM

Yes, so that is a separate question I am asking TBS. I just wanted to confirm with OFA Legal a limited question of whether they would go as far as to require the MOECC's buy-in for the intercept provision.

OFA Legal is thus far onside with treating flow-through expenditure and non-operating appropriation separate, the same way social programs under FHP as being separate.

Joh

From: Ronald Kwan
Sent: Friday, October 13, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Intercept provision

Hi John,

Not sure on reading your email to Lisa that Lisa understood what I thought was the issue.

Is it that there is an appropriation to GreenOn, and then GreenON funds an IESO program. Is that right? Check withy the IESO and TBS.

Would OFA Legal consider that not an appropriation (in effect) for the IESO?

Ron

From: John Kim
Sent: October-13-17 16:50
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Intercept provision

Fyi. Checking now with TBS.

From: Lisa Stein
Sent: Thursday, October 12, 2017 3:31 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: Intercept provision

Hi John,

If I understand your question correctly, the answer is that the Ministry of Environment and Climate Change (MOECCC) is not required to be a party to the FHP credit facility intercept MOU/letter agreement. The letter agreement is intended to be between the "responsible ministry" (in this case Ministry of Energy (MOE)) and the public body (in this case IESO).

The intercept would apply to money appropriated by the Legislature for "payment to the public body". Therefore, money appropriated by the Legislature for payment to a different ministry, a different public body, or to MOE (or an agency of MOE, etc.) for a program *unrelated* to the IESO, would not be caught by the intercept.

I've included an excerpt below which should be helpful in this regard. Please let me know if you would like to discuss further.

Lisa

Excerpt from OFA Lending Policy (emphasis added):

Pursuant to section 23 of the *Capital investment Plan Act* and prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

From: John Kim
Sent: Thursday, October 12, 2017 3:01 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Intercept provision

Hi Sarah, Lisa,

I have a request for a legal interpretation of the OFA Lending Policy.

The OFA Lending Policy as we currently have it, does it provide for a requirement [of the MOU/the letter agreement we have drafted] other than one ministry responsible for the public body? The way I read the policy, I believe there should be one Ministry that provides oversight of the public body.

This morning, at a meeting, IESO representative raised the issue of their managing the government's implementation of Green ON Fund (?). I am presuming that the same type of arrangement applies for this program as the Energy's program, i.e. no appropriation for IESO's operation, and this is TBD but would like to know how implementation of such a program funded by another ministry would factor into what we are looking to do.

The purpose of the question is to entertain whether the MOU/the letter agreement needs to include MOECC or not. I don't think so but would appreciate your assessment.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

To:	Gadi Mayman
Cc:	Anna Strathy
Subject:	RE: Latest version of the ENE - OFHP note
Date:	Tuesday, May 09, 2017 11:27:50 AM

We could also add in a note on the requirement for a new OIC.

iii) Note a new credit facility is being sought by the IESO from the Ontario Financing Authority to ensure that it has the flexibility to finance clean energy costs if for some reason the OPG Trust, at any time or for a period of time, does not purchase any portion of the deferred Global Adjustment amounts payments. And note that the

-----Original Message-----
From: Ronald Kwan
Sent: May-09-17 11:23 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Latest version of the ENE - OFHP note

Hi Gadi,

What about this wording?

iii) Note a new credit facility is being sought by the IESO from the Ontario Financing Authority to ensure that it has the flexibility to finance clean energy costs if for some reason the OPG Trust, at any time or for a period of time, does not purchase any portion of the deferred Global Adjustment amounts payments.

Ron

-----Original Message-----
From: Gadi Mayman
Sent: May-09-17 11:15 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Latest version of the ENE - OFHP note

Thanks, Ron. I'm not sure how they're going to cover off 43 very detailed pages in 10 minutes, particularly if they do it in camera, so it will be interesting.

Gadi

-----Original Message-----
From: Ronald Kwan
Sent: Tuesday, May 09, 2017 10:52 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: Latest version of the ENE - OFHP note

Hi Gadi,

We can pass that request on.

Ron

> On May 9, 2017, at 10:47 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

>
> Subsection (iii) of the proposed minute notes that the IESO is seeking a new credit facility, but it doesn't mention that it will be from us. Should the OFA be added in to the minute to make that clear?
>
> Thanks,
> Gadi
>
> -----Original Message-----
> From: Ronald Kwan
> Sent: Tuesday, May 09, 2017 10:16 AM
> To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
> Subject: Re: Latest version of the ENE - OFHP note
>
> Also, appendix G discusses the IESO credit facility from the OFA and OIC.
>
> Ron
>
>> On May 9, 2017, at 10:15 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>>
>> Hi Gadi,
>>
>> Are you attending TB today on this?
>>
>> Would you be providing a financing assessment?
>>
>> Ron
>>
>>
>> Begin forwarded message:
>>
>> From: "Strang, James (TBS)" <James.Strang@ontario.ca<mailto:James.Strang@ontario.ca>>
>> To: "John Kim" <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
>> Cc: "Ronald Kwan" <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
>> Subject: FW: Latest version of the ENE - OFHP note
>>
>> Latest version..
>>
>> From: Fung, Felix (TBS)
>> Sent: May 8, 2017 6:41 PM
>> To: Laughton, Patrick (TBS); Arbabzadeh, Nina (TBS); Graham, Helen (TBS); Petsche, Nadine (TBS); Proulx, Didem (TBS); Wuschnakowski, Gary (TBS); Marcos, Helder (TBS)
>> Cc: Strang, James (TBS); Dutton, Andrea (TBS); George-Harris, Judy (TBS)
>> Subject: RE: Latest version of the ENE - OFHP note
>>
>> Sorry! The file didn't work in my previous email. Please find attached the note again.
>>
>> From: Fung, Felix (TBS)
>> Sent: May-08-17 6:34 PM
>> To: Laughton, Patrick (TBS); Arbabzadeh, Nina (TBS); Graham, Helen (TBS); Petsche, Nadine (TBS); Proulx, Didem (TBS); Wuschnakowski, Gary (TBS); Marcos, Helder (TBS)
>> Cc: Strang, James (TBS); Dutton, Andrea (TBS); George-Harris, Judy (TBS)
>> Subject: Latest version of the ENE - OFHP note
>>
>> Hi everyone,
>>
>> Please find attached the latest version of the OFHP assessment note - incorporating feedback from folks today.

>>
>> Patrick - two things to point out:
>>
>>
>> - the Ministry requested a new TP line to support "future rate mitigation initiatives". We struck out the minutes related to this request, given a TP can be created in the future once we have a specific future rate mitigation initiative (rather than just creating a placeholder now). However, we thought we would include it on page 12 in case folks do want that minute included.
>>
>> - We also included the Minute for media buy / ARB request. Let us know if there are any concerns with the language.
>>
>>
>> Thanks - let us know if there are any concerns. Patrick - we will wait for your ok before we share the note with Energy.
>>
>> And many thanks to OCPD and COE for all your help and support on this.
>>
>> Felix
>>
>> <3 RAN Ontario Fair Hydro Plan Proposed Leg v5.doc>

From: Ronald Kwan
To: Anna Strathy
Cc: Usman Zahid
Subject: RE: Meeting with Energy
Date: Monday, June 11, 2018 12:43:39 PM
Attachments: Minister Directive for IESO Credit Facility Approval.pdf

---

Hi Anna,

As you may recall, the IESO has several financing facilities, two from the OEFC and two from the OFA.

The OFA ones have been used for interim financing for the IESO deferral account. When the deferral account was established, the IESO deferral account from the OFA was for up to $975 million, but that was replaced with two facilities – the $975 M facility was reduced to $475 million, and a new facility for $2 billion was established, with the latter focussed on short term financing of the IESO deferral account.

As with all OFA loans to public bodies, the OFA received a directive from the Minister for them (see attached for the $2 Bn facility).

Ron

From: Anna Strathy
Sent: June-11-18 12:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Meeting with Energy
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

Ontario

Ministry of Finance

Approval Form

General Information

Item	Deputy Minister's Office Contact (Last Name, First Name)
IESO FAP Credit Facility	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, Rowena		2017/06/28
Chief Executive Officer	Murgman, Gord		2017/06/29
Associate Deputy Minister			
Deputy Minister			

Supplemental Approvals

Area	Name (Last Name, First Name)	Signature	Date (yyyy/mm/dd)
Corporate Services FIN	Hanslep, Malle		2017/06/28
Legal Services OFA	Stein, Lis		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.

../2

- 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 2 9 2017

Charles Sousa
Minister of Finance

From:	Ronald Kwan
To:	Anna Strathy
Cc:	Usman Zahid
Subject:	RE: Meeting with Energy
Date:	Monday, June 11, 2018 2:56:46 PM

Hi Anna,

As discussed, IESO is looking to clear the anticipated $566 million in the deferral account arising from the April and May periods. Of that, currently, IESO has drawn $256 million from the OFA facility and would need to draw a further $310 million in about a week when the May settlement amounts are cleared.

With respect to the email chain that I discussed with you and Gadi, while it only made its way to CEFD this morning, OPG had emailed CMD on Friday. So, in the intervening period, this issue may have already been resolved as something to wait on for direction from the in-coming government.

Ron

From: Ronald Kwan
Sent: June-11-18 12:44
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Meeting with Energy

Hi Anna,

As you may recall, the IESO has several financing facilities, two from the OEFC and two from the OFA.

The OFA ones have been used for interim financing for the IESO deferral account. When the deferral account was established, the IESO deferral account from the OFA was for up to $975 million, but that was replaced with two facilities – the $975 M facility was reduced to $475 million, and a new facility for $2 billion was established, with the latter focussed on short term financing of the IESO deferral account.

As with all OFA loans to public bodies, the OFA received a directive from the Minister for them (see attached for the $2 Bn facility).

Ron

From: Anna Strathy
Sent: June-11-18 12:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Meeting with Energy
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From: Ronald Kwan
To: Deena Padamadan
Subject: RE: Minister"s Directive IESO FHP 2017 v3
Date: Thursday, June 15, 2017 5:01:17 PM

Hi,

I'm okay with a deletion, as per the comment. We'll have to think about the appropriate spread.

Ron

-----Original Message-----
From: Deena Padamadan
Sent: June-15-17 14:05
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Minister's Directive IESO FHP 2017 v3

Hi Ron,

Please see below and attached for your review from EFB.

Thanks,
Deena

-----Original Message-----
From: Salman Qadir
Sent: Thursday, June 15, 2017 1:30 PM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Minister's Directive IESO FHP 2017 v3

Hi Deena,

Attached, for Ron's review and any comment, is the latest draft of the Minister's Directive that will direct the OFA to provide the $2 billion revolving credit facility to the IESO for its role under the ONFHP. OFA legal and Documentation have reviewed this and we're preparing an approval package. We just wanted to get this on Ron's radar and for any additional feedback he may have.

Thank you,
Salman

From:	Nelms, Scott (MOF)
To:	Ronald Kwan
Subject:	RE: Monday
Date:	Friday, June 23, 2017 12:30:15 PM

I got Nancy involved. She is going to chat with Brandon. Hopefully we can find a work minimizing solution. Sounds like wires may have been crossed with Gwen and our involvement.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 12:29 PM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

Sure.

I will admit to being surprised about the request this morning to attend on Monday.

I know we had talked for awhile about a briefing for the Minister on the MOF-related items on the FHP (Support Agreement, s.28 & indemnity, OIC for the OFA lending to IESO, IESO Treasury Policy amendment approval, PILs ask), which is scheduled for Wednesday, but I saw that as distinct from the Energy Regs item.

I have been rarely invited to the Minister's pre-Cabinet briefing meetings (the only other time I can recall was when Brandon was briefing on the FHP in Feb/March using his placemat).

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I was being ironic – we are not prepped at all. But that's ok. Not the first time.

Looks like meeting is moved a bit later so will try to make it work. Next time we should talk about who is doing what on this file.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:30 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Thanks Scott.

If it could be scheduled for 3pm Monday, that would be better for me, but glad to know that you're prepped for it.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:28
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I got them essentially the same time as you. Haven't looked at them. We are prepped for this one.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:25 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I should say that it is just a tour, though it was long-to-be planned.

Did you have materials prepared to brief on the Energy regs? I had not been following them closely, as I had not seen anything prior to the bootleg copies, so I would not see myself or EFB staff as best placed to speak to them.

Ron

From: Ronald Kwan
Sent: June-23-17 10:49
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Subject: RE: Monday

Hi Scott,

It's out of town.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

That is a problem. I can't get out of m meeting. Any chance you can exit yours?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 10:38 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I also have a conflict at that time, and had been assuming you would be there.

I had been contemplating just having Bruno talk to the MOF OIC submission.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Monday

Hi Ron,

I have a conflict for the Monday committee meeting. Do you mind walking the Minister through the Energy regs – I assumed you probably would anyways? I will join you for the Wednesday discussion. '

Thanks,
Scott

Scott Nelms
Electricity Investment and Governance Secretariat | Ministry of Finance
7th Floor | 375 University ave. | Toronto, ON
w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	RE: Monday
Date:	Friday, June 23, 2017 12:28:37 PM

Hi Scott,

Sure.

I will admit to being surprised about the request this morning to attend on Monday.

I know we had talked for awhile about a briefing for the Minister on the MOF-related items on the FHP (Support Agreement, s.28 & indemnity, OIC for the OFA lending to IESO, IESO Treasury Policy amendment approval, PILs ask), which is scheduled for Wednesday, but I saw that as distinct from the Energy Regs item.

I have been rarely invited to the Minister's pre-Cabinet briefing meetings (the only other time I can recall was when Brandon was briefing on the FHP in Feb/March using his placemat).

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I was being ironic – we are not prepped at all. But that's ok. Not the first time.

Looks like meeting is moved a bit later so will try to make it work. Next time we should talk about who is doing what on this file.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:30 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Thanks Scott.

If it could be scheduled for 3pm Monday, that would be better for me, but glad to know that you're prepped for it.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:28

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I got them essentially the same time as you. Haven't looked at them. We are prepped for this one.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:25 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I should say that it is just a tour, though it was long-to-be planned.

Did you have materials prepared to brief on the Energy regs? I had not been following them closely, as I had not seen anything prior to the bootleg copies, so I would not see myself or EFB staff as best placed to speak to them.

Ron

From: Ronald Kwan
Sent: June-23-17 10:49
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Subject: RE: Monday

Hi Scott,

It's out of town.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

That is a problem. I can't get out of m meeting. Any chance you can exit yours?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 10:38 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I also have a conflict at that time, and had been assuming you would be there.

I had been contemplating just having Bruno talk to the MOF OIC submission.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Monday

Hi Ron,

I have a conflict for the Monday committee meeting. Do you mind walking the Minister through the Energy regs – I assumed you probably would anyways? I will join you for the Wednesday discussion. ‘

Thanks,
Scott

Scott Nelms
Electricity Investment and Governance Secretariat | Ministry of Finance
7th Floor | 375 University ave. | Toronto, ON
w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Subject: RE: Monday
Date: Friday, June 23, 2017 12:33:40 PM

Hi Scott,

I had mentioned to Gwen when talking about scheduling our briefing that it would be good to brief the Minister on MOF-related items so that he is aware of them as the Energy items go forward, should the MOF-related items come up. But that was when I thought the Minister's briefing on the MOR-related items was targeted for this week.

The sequencing is not ideal from that perspective, but given that the s.28 submission is still pending, having our briefing on Wednesday instead of this week may be better for that purpose.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 12:30
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I got Nancy involved. She is going to chat with Brandon. Hopefully we can find a work minimizing solution. Sounds like wires may have been crossed with Gwen and our involvement.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 12:29 PM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

Sure.

I will admit to being surprised about the request this morning to attend on Monday.

I know we had talked for awhile about a briefing for the Minister on the MOF-related items on the FHP (Support Agreement, s.28 & indemnity, OIC for the OFA lending to IESO, IESO Treasury Policy amendment approval, PILs ask), which is scheduled for Wednesday, but I saw that as distinct from the Energy Regs item.

I have been rarely invited to the Minister's pre-Cabinet briefing meetings (the only other time I can recall was when Brandon was briefing on the FHP in Feb/March using his placemat).

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:56
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I was being ironic – we are not prepped at all. But that's ok. Not the first time.

Looks like meeting is moved a bit later so will try to make it work. Next time we should talk about who is doing what on this file.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:30 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Thanks Scott.

If it could be scheduled for 3pm Monday, that would be better for me, but glad to know that you're prepped for it.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 11:28
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

I got them essentially the same time as you. Haven't looked at them. We are prepped for this one.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 11:25 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I should say that it is just a tour, though it was long-to-be planned.

Did you have materials prepared to brief on the Energy regs? I had not been following them closely, as I had not seen anything prior to the bootleg copies, so I would not see myself or EFB staff as best placed to speak to them.

Ron

From: Ronald Kwan
Sent: June-23-17 10:49
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Subject: RE: Monday

Hi Scott,

It's out of town.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Monday

That is a problem. I can't get out of m meeting. Any chance you can exit yours?

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June 23, 2017 10:38 AM
To: Nelms, Scott (MOF)
Subject: RE: Monday

Hi Scott,

I also have a conflict at that time, and had been assuming you would be there.

I had been contemplating just having Bruno talk to the MOF OIC submission.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: June-23-17 10:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Monday

Hi Ron,

I have a conflict for the Monday committee meeting. Do you mind walking the Minister through the Energy regs – I assumed you probably would anyways? I will join you for the Wednesday discussion. ‘

Thanks,
Scott

Scott Nelms
Electricity Investment and Governance Secretariat | Ministry of Finance
7th Floor | 375 University ave. | Toronto, ON
w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Gavin He
To: Ronald Kwan
Subject: RE: OFA ARMC Meeting
Date: Tuesday, May 16, 2017 10:05:10 AM

Hi Ron,

Would you like EFB to prepare some materials for this meeting on FHP?

Regards,
Gavin He

From: Anna Strathy
Sent: Tuesday, May 16, 2017 9:41 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: OFA ARMC Meeting

Hi Ron,

As discussed, the next OFA ARMC Meeting – where the AG suggested a presentation on the FHP – is June 16 from 9:00-11:30am. Sarah Neville will follow up directly with you regarding the minute.

Thanks, Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From:	Shajee Kathirgamanathan
To:	Ronald Kwan; Bruno Amara
Cc:	Deena Padamadan; John Kim
Subject:	RE: OFA Audit Risk Management Committee Deck
Date:	Monday, June 12, 2017 4:10:53 PM
Attachments:	OFA ARMC - FHP Briefing (2017 06 01 v23).pdf OFA ARMC - FHP Briefing (2017 06 01 v23).pptx

Hi Ron,

Please find attached the clean (final) deck.

The first attachment is the PDF for distribution. The second one is Powerpoint with notes for your reference.

Files also found here.

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 4:05 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

Please send the deck without notes, and perhaps best as a pdf. Could remove "draft" too in the upper corner.

I did look at the notes in an earlier draft you sent, and made a few edits (unmarked).

Thanks,
Ron

From: Bruno Amara
Sent: June 12, 2017 4:03:09 PM
To: Ronald Kwan
Cc: Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject: RE: OFA Audit Risk Management Committee Deck

Ron

We have notes on some slides – I think they are OK, but I did not vet as closely as slides. We'll send the deck without notes, but maintain those for your use. Are you OK with that approach?

Bruno

From: Ronald Kwan
Sent: Monday, June 12, 2017 3:58 PM
To: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

How about "recovery" instead of "repayment"?

Ron

From: Shajee Kathirgamanathan
Sent: June 12, 2017 2:57:52 PM
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck

Thanks Ron.

We're fine with your edits, but made one additional change on Slide 13, marked in green.

It's referring to a 'difference' but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan
Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.
>
> We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.
>
> The v21_clean file can also be found in this folder.
>
> Thanks,
> Shajee

Shajee Kathirgamanathan
Senior Advisor
Electricity Finance Branch, Corporate and Electricity Finance Division
Ontario Financing Authority
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

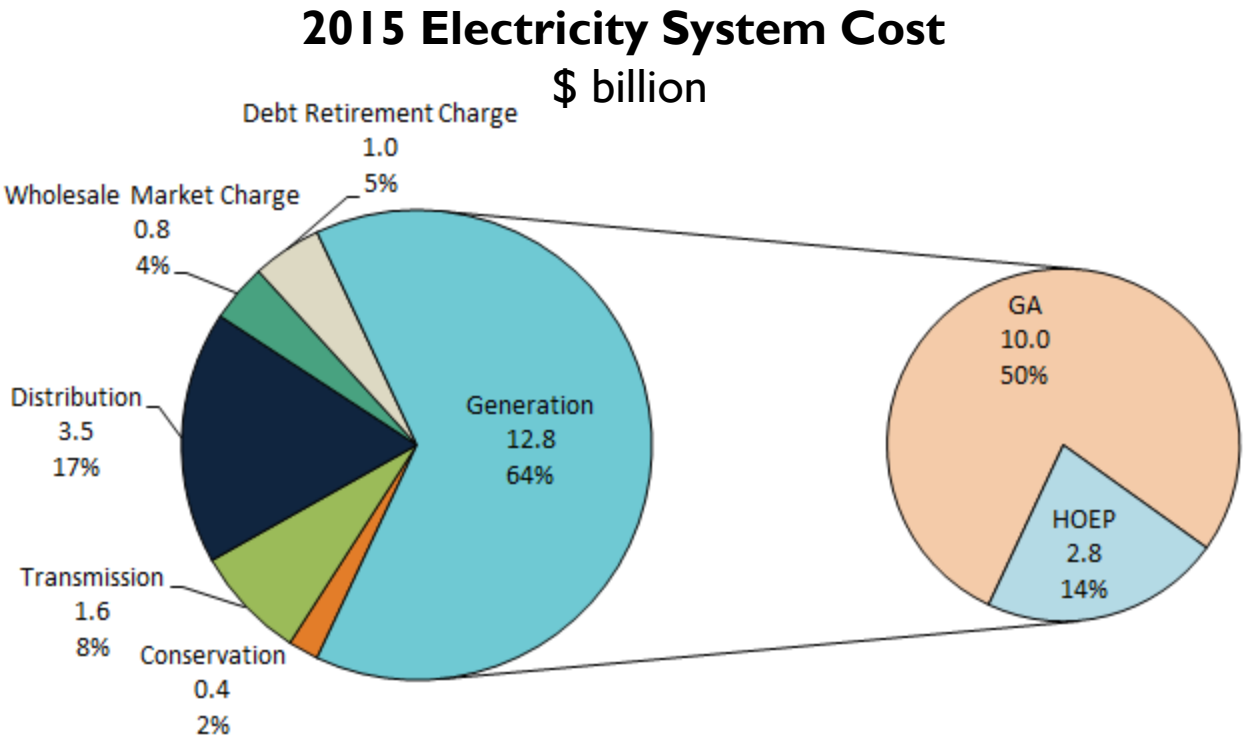
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

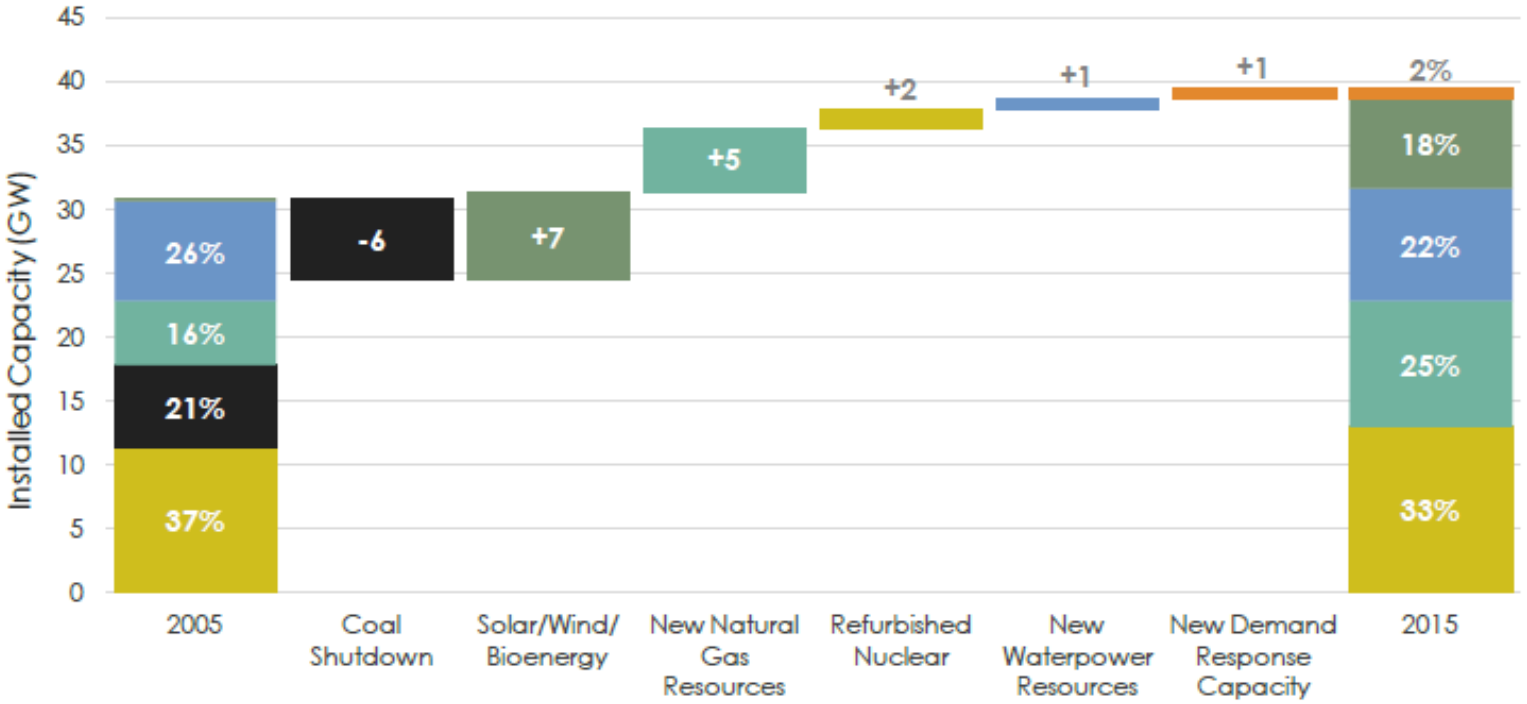
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

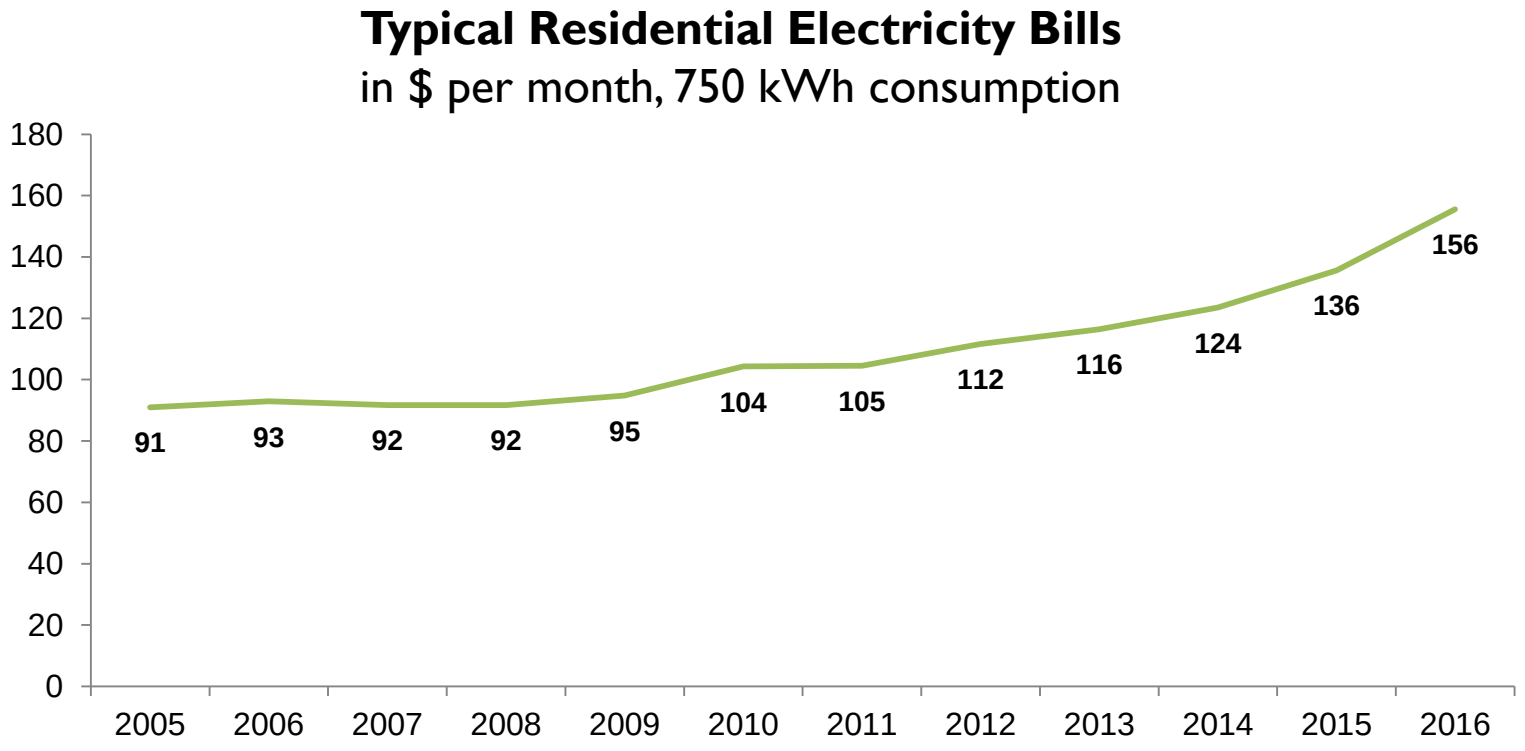
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

Overview:
The Ontario Fair Hydro Plan (cont'd)

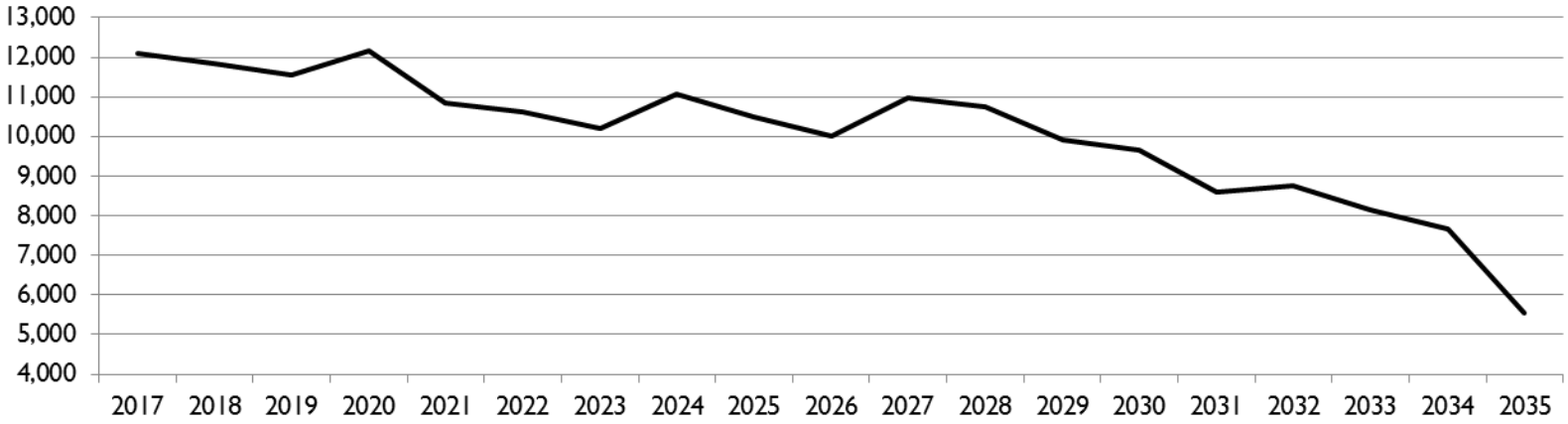
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The illustrative chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



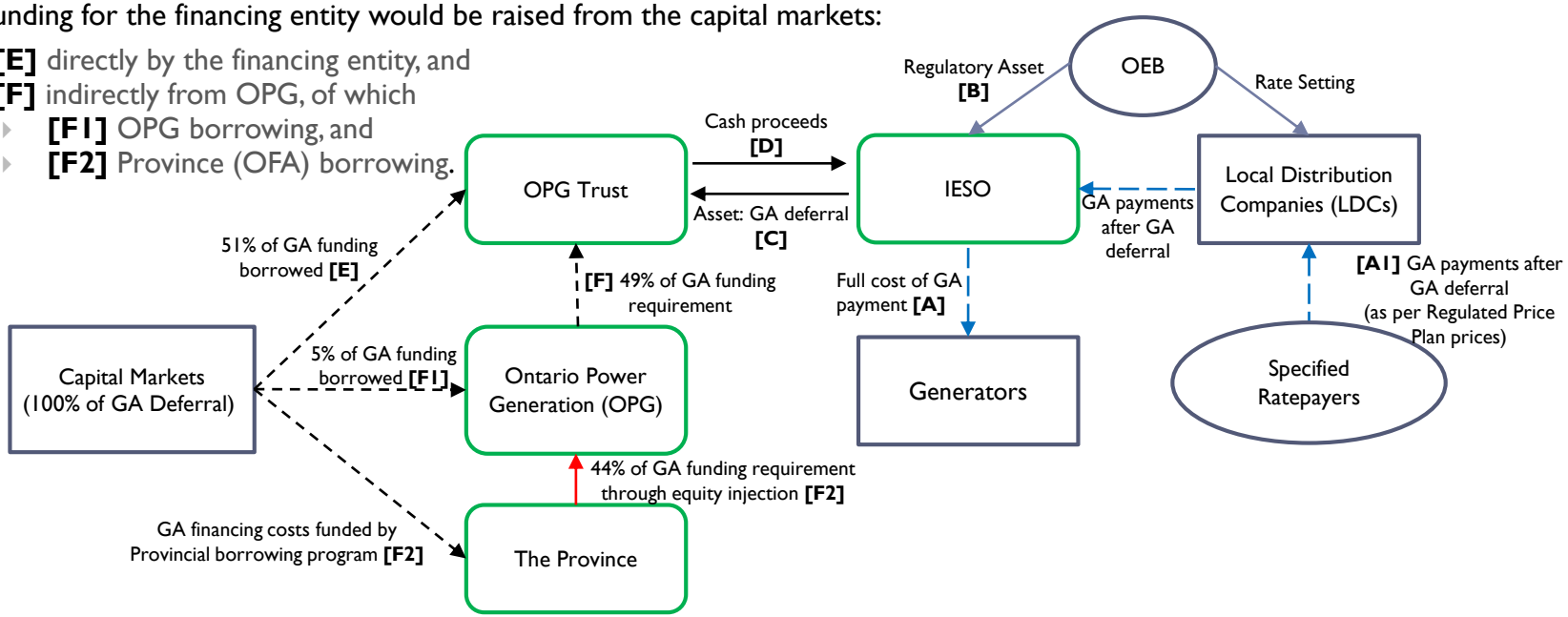
Source: IESO

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

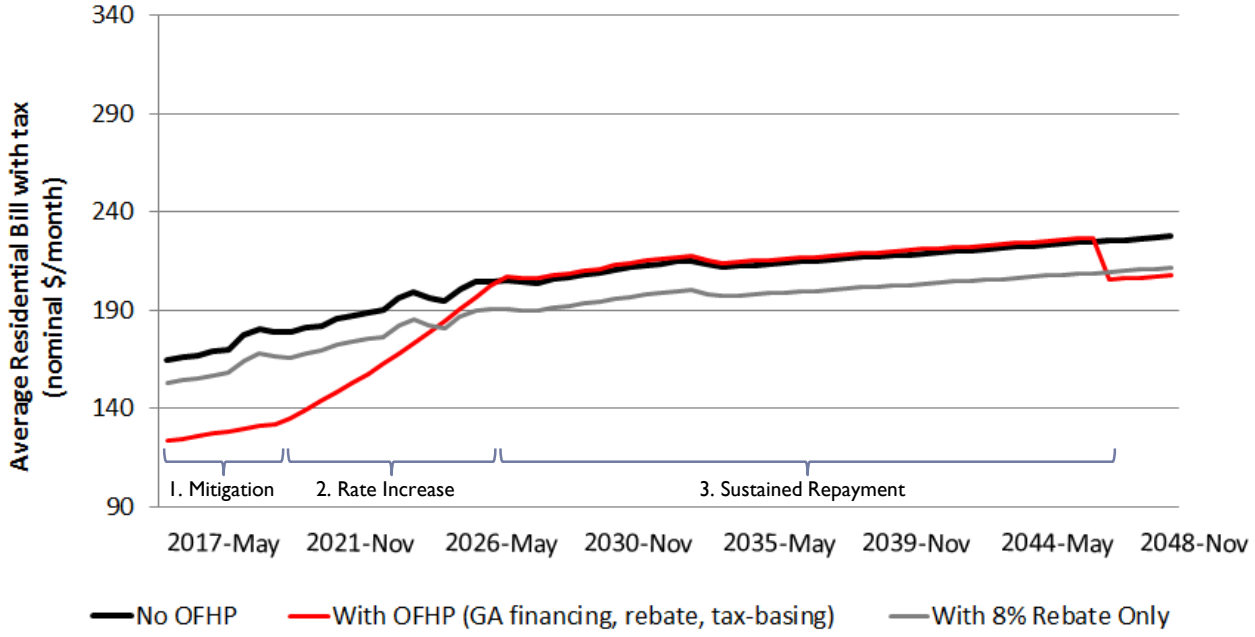
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments).
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see illustrative chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

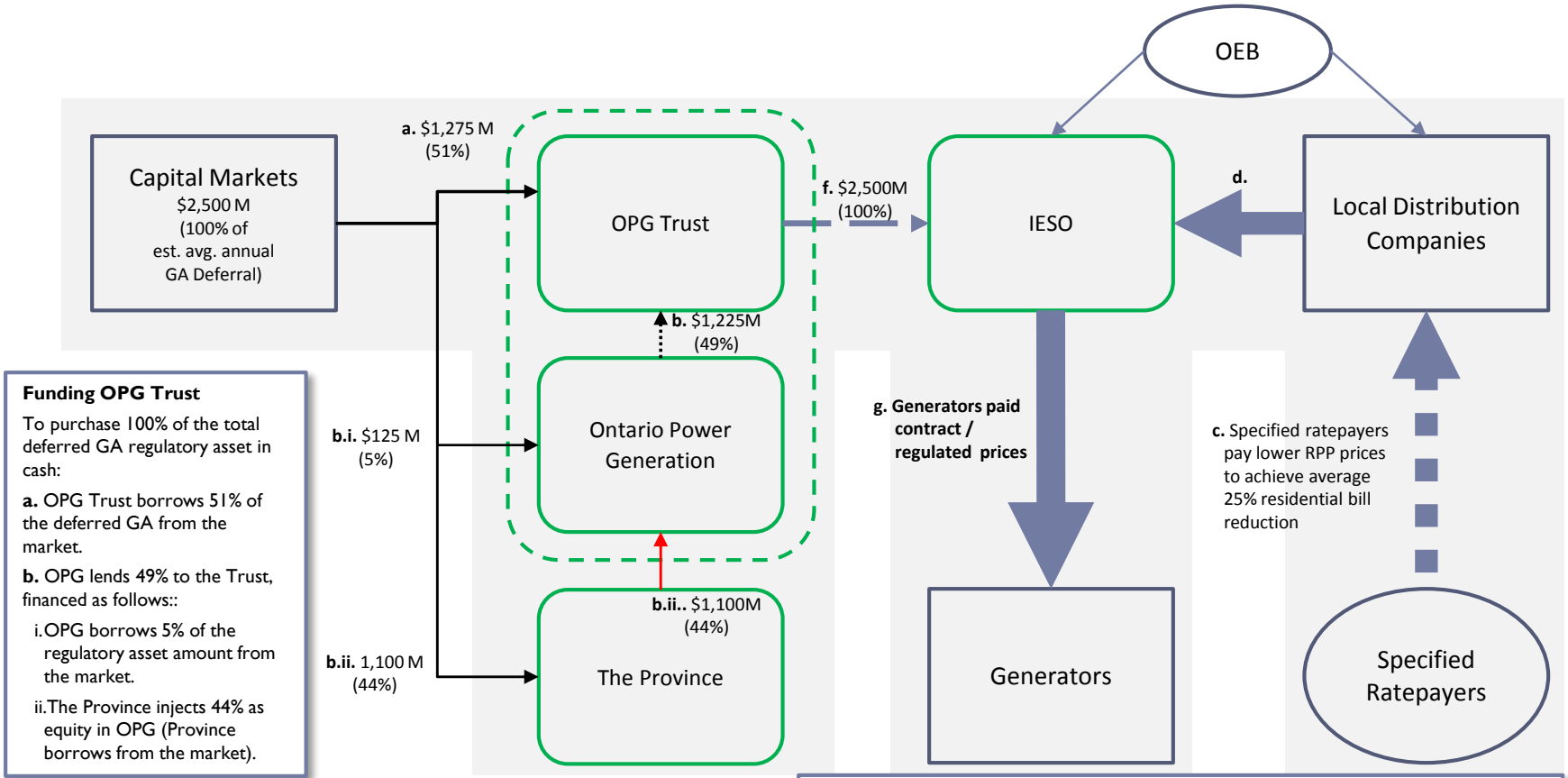
Phase 2: Rate Increase

- Residential bills continue lower than without the OFHP; however, not by 25% on average.
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases for the above purpose projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference between with OFHP (red) and 8% rebate (grey) only represents recovery of deferred GA and financing.

GA Financing Structure: Illustrative Fund Flows* - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

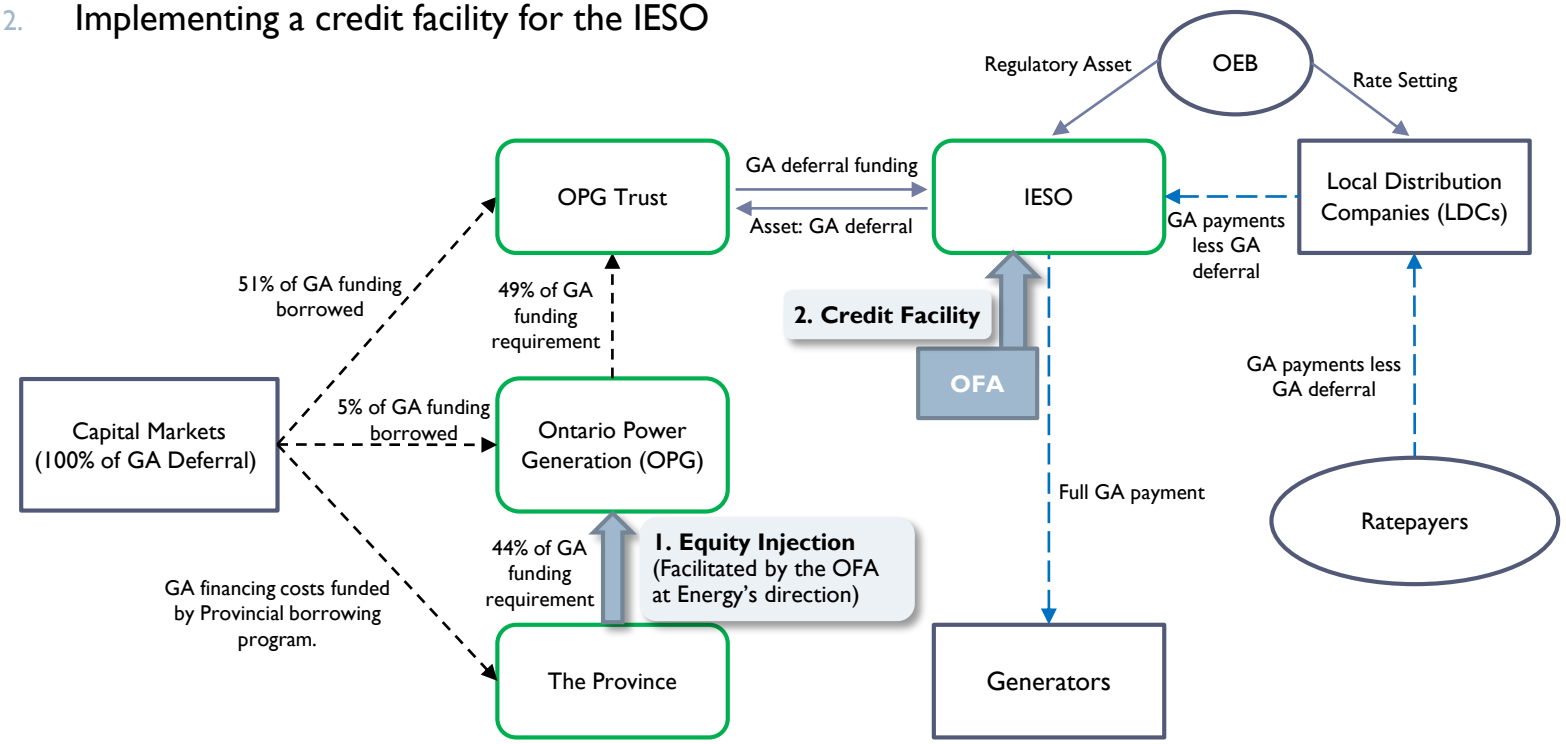
f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

* Amounts are illustrative and based on an assumed deferred cost, or regulatory of $2.5 billion.

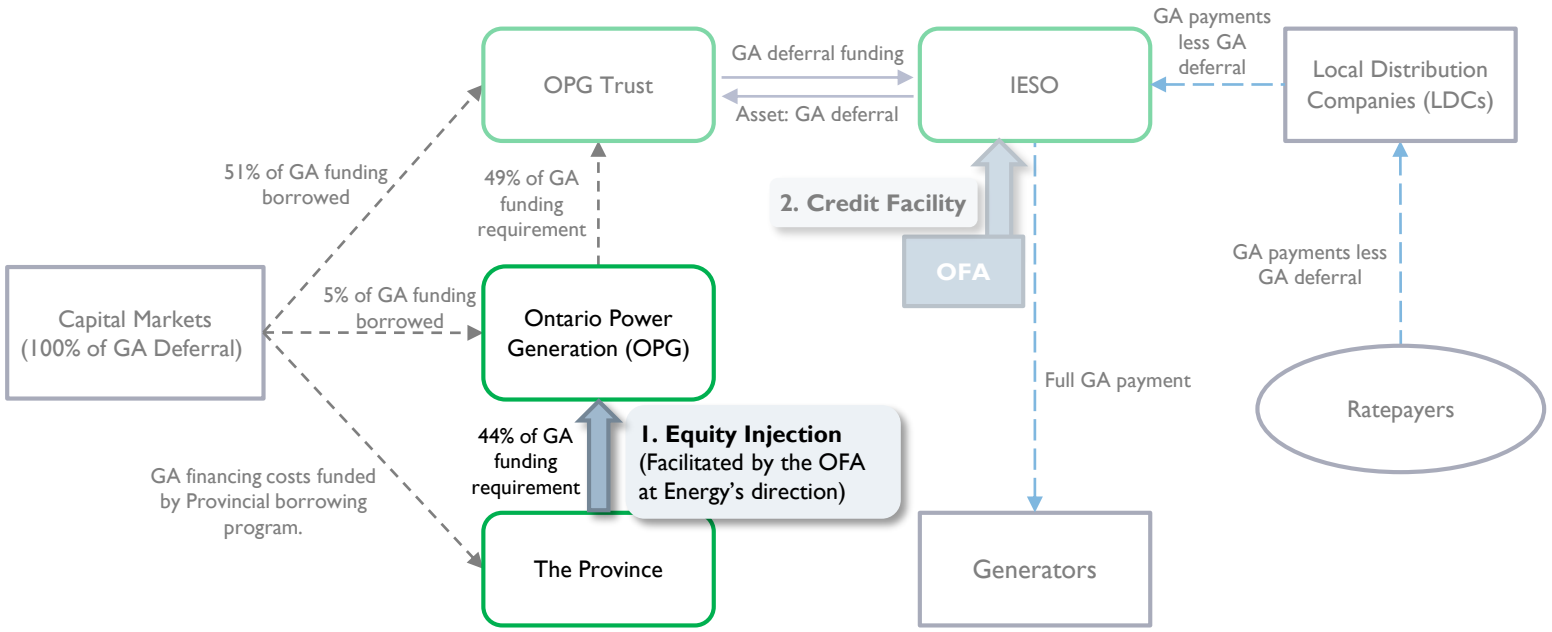
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO



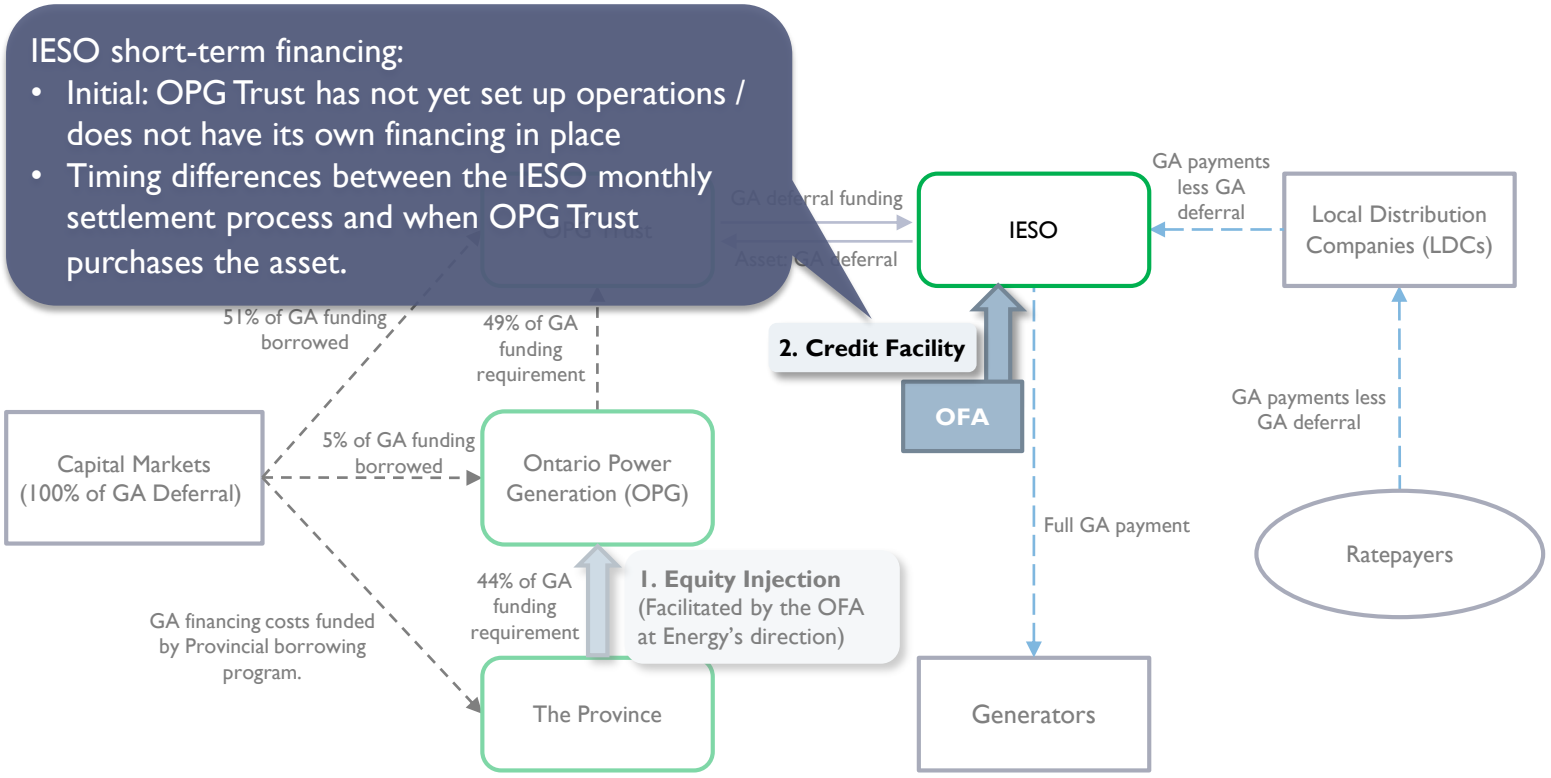
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1 bn related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which
  - on consolidation into Public Accounts, would be offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

GA Financing: Illustrative Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

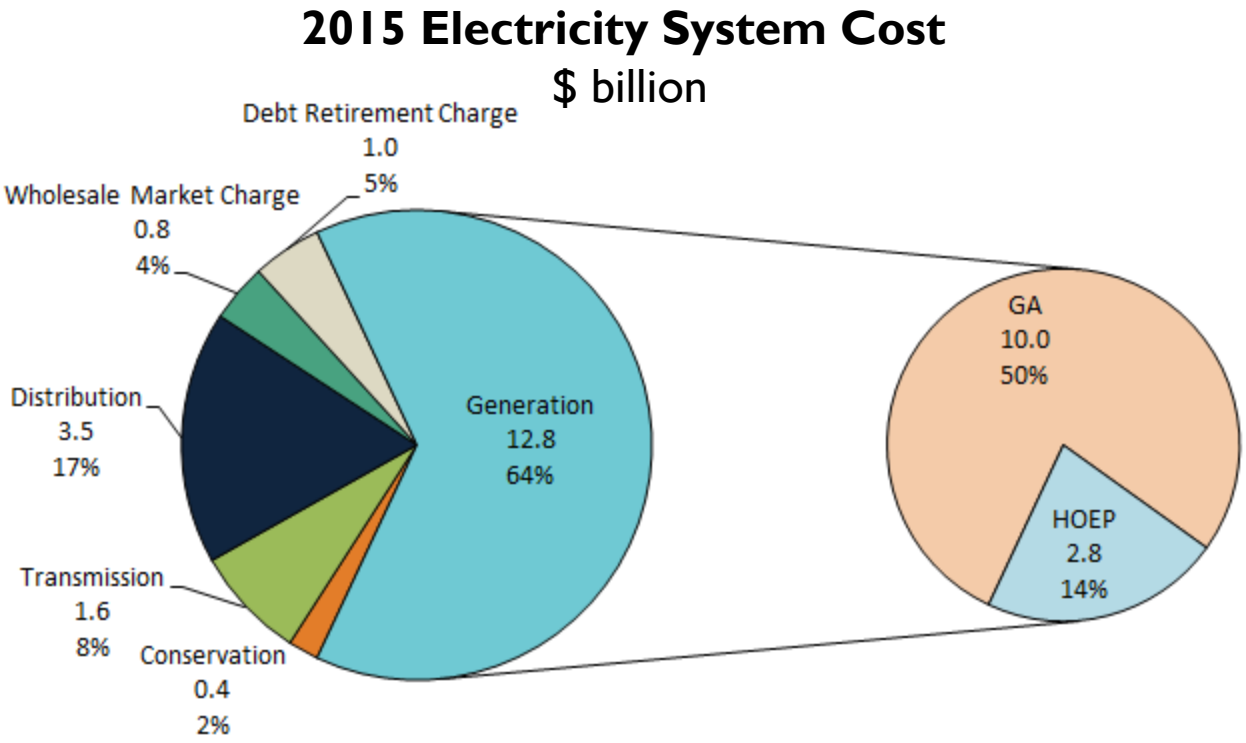
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

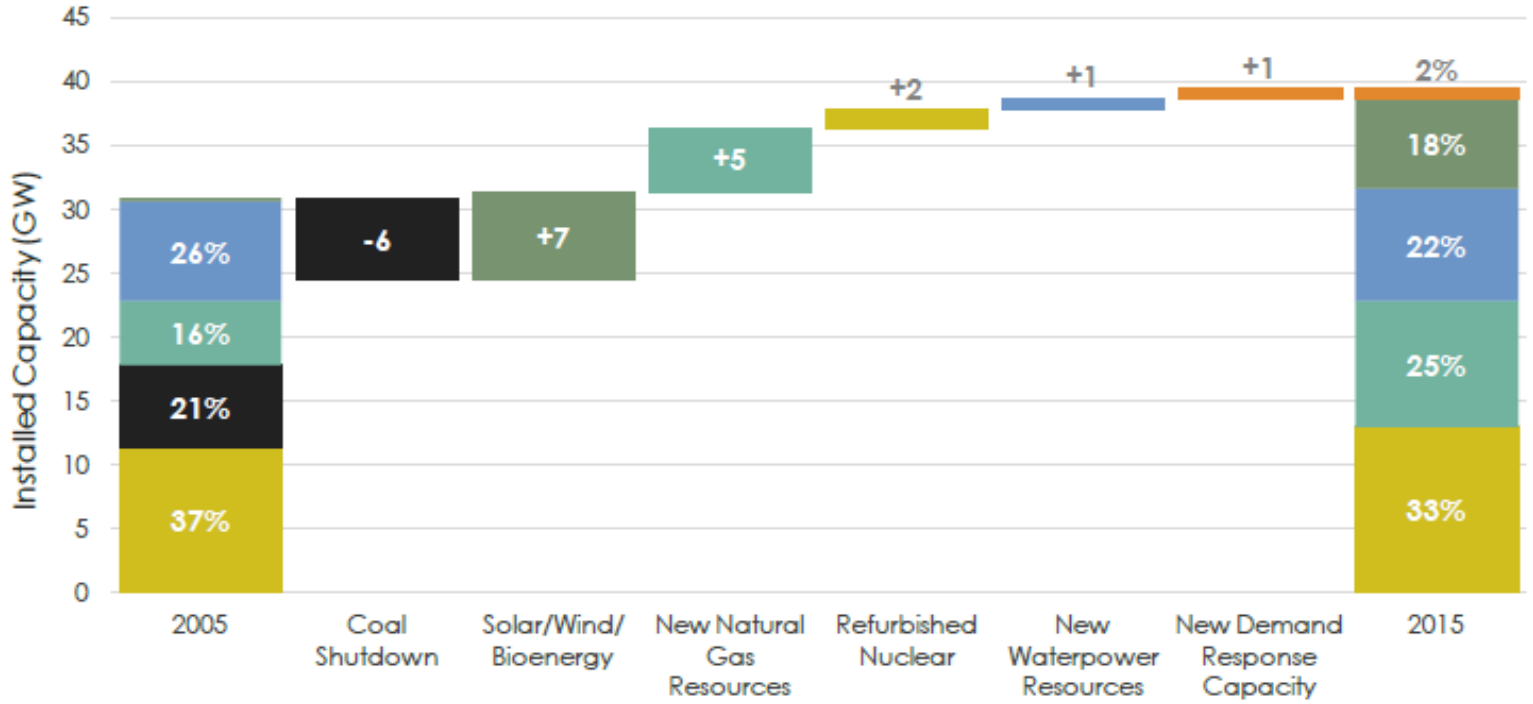
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

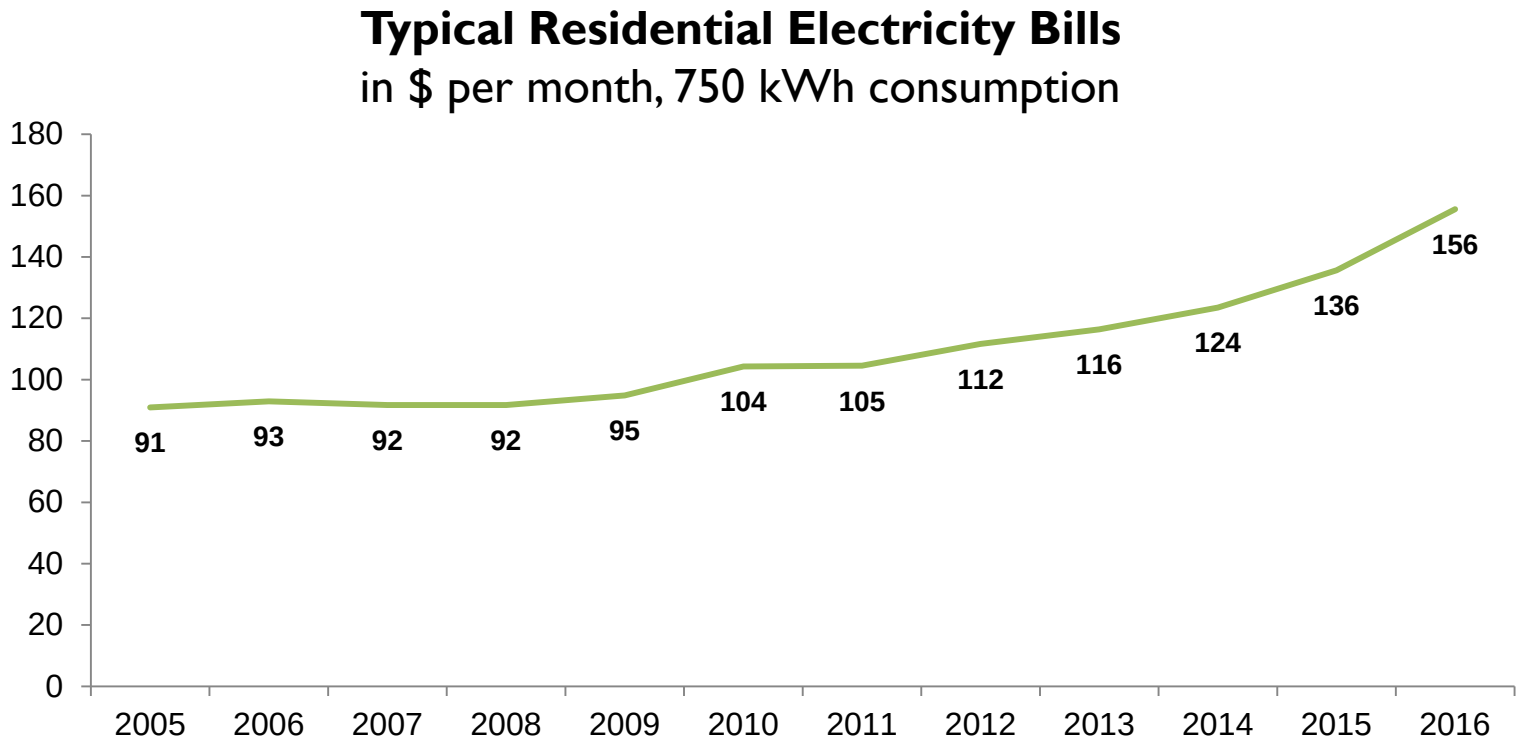
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

Overview:
The Ontario Fair Hydro Plan (cont'd)

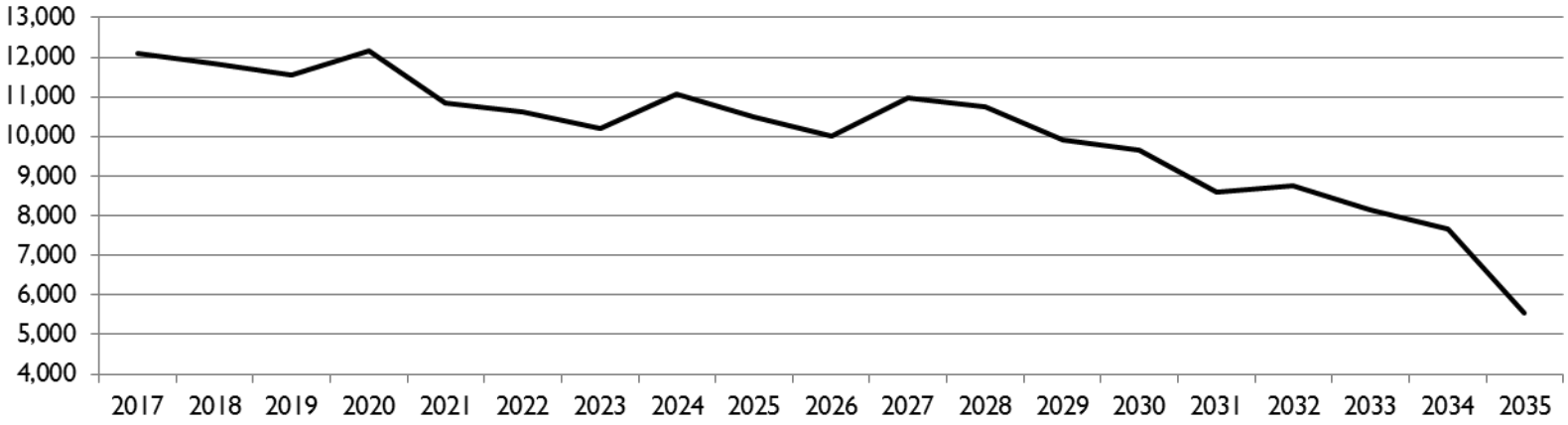
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The illustrative chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



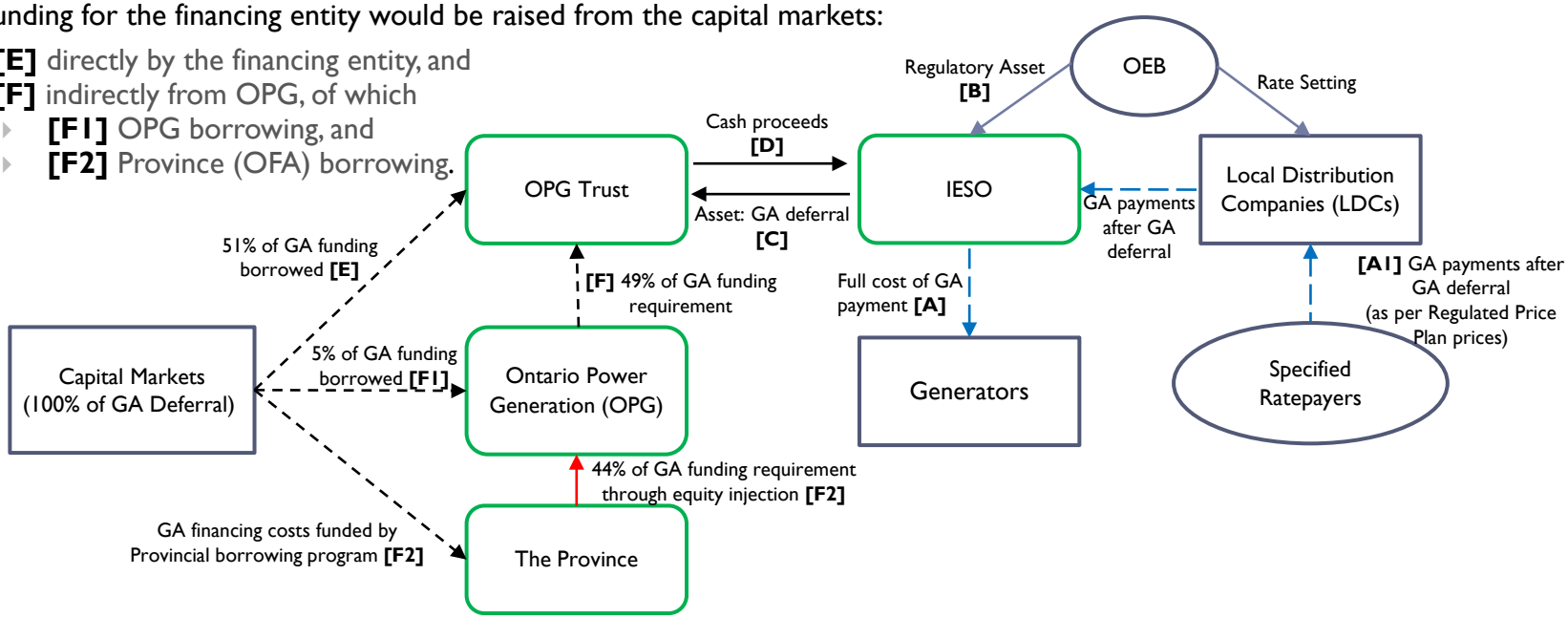
Source: IESO

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

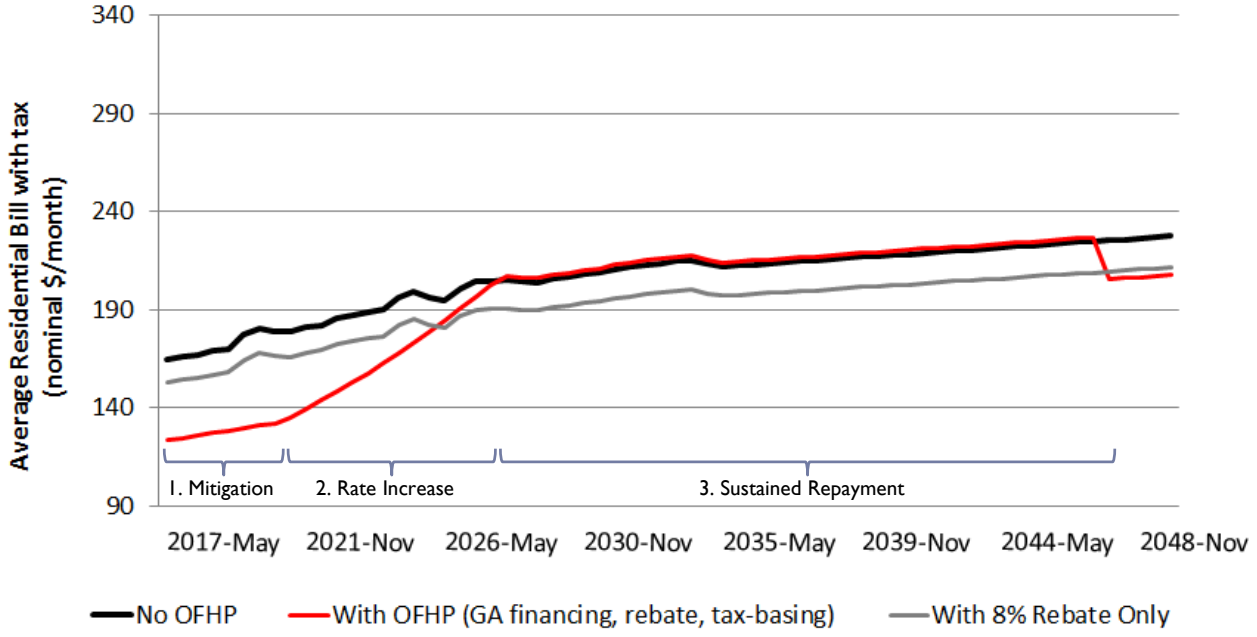
GA Financial Structure

- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments).
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see illustrative chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

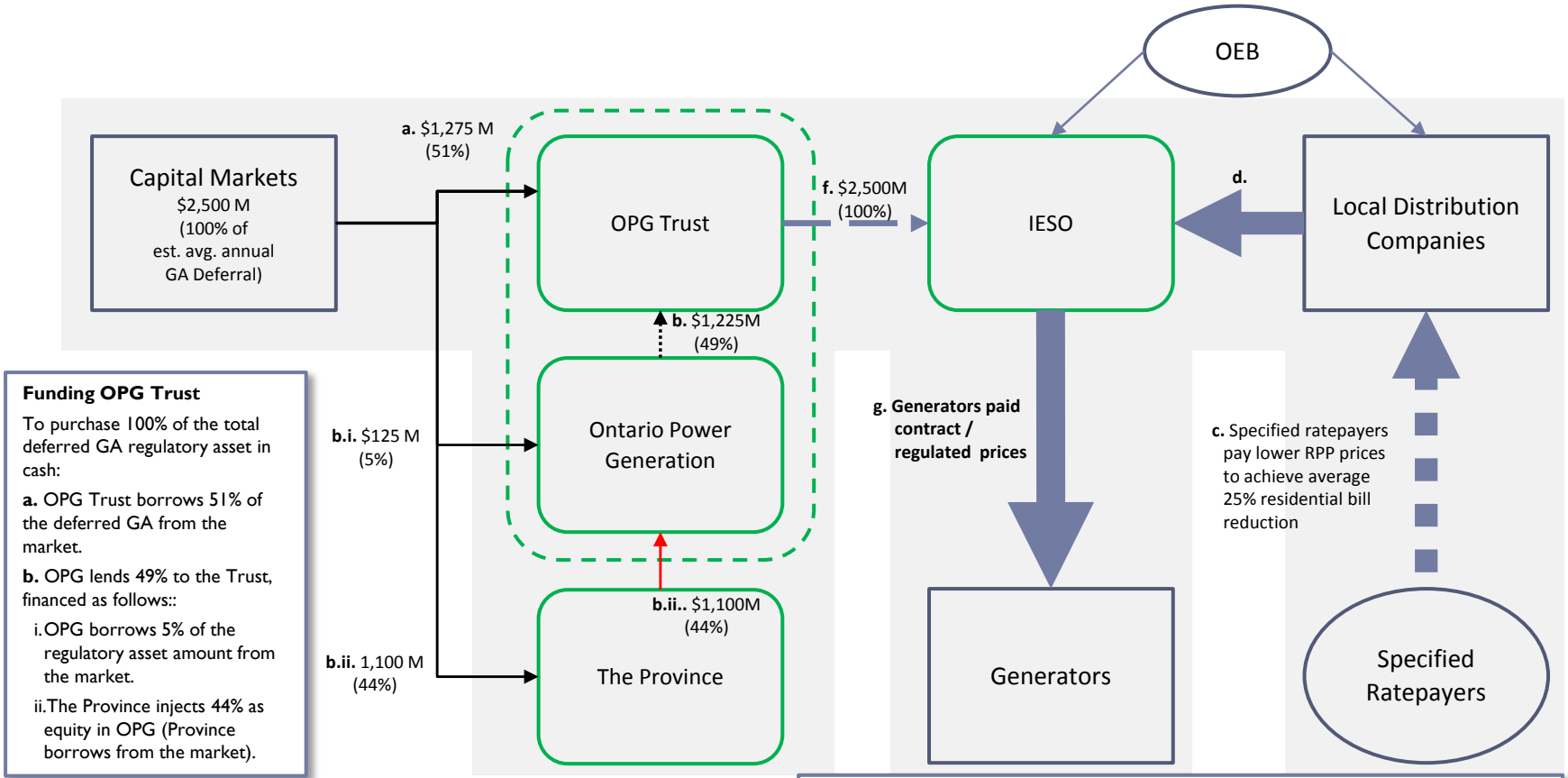
Phase 2: Rate Increase

- Residential bills continue lower than without the OFHP; however, not by 25% on average.
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases for the above purpose projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference between with OFHP (red) and 8% rebate (grey) only represents recovery of deferred GA and financing.

GA Financing Structure: Illustrative Fund Flows* - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

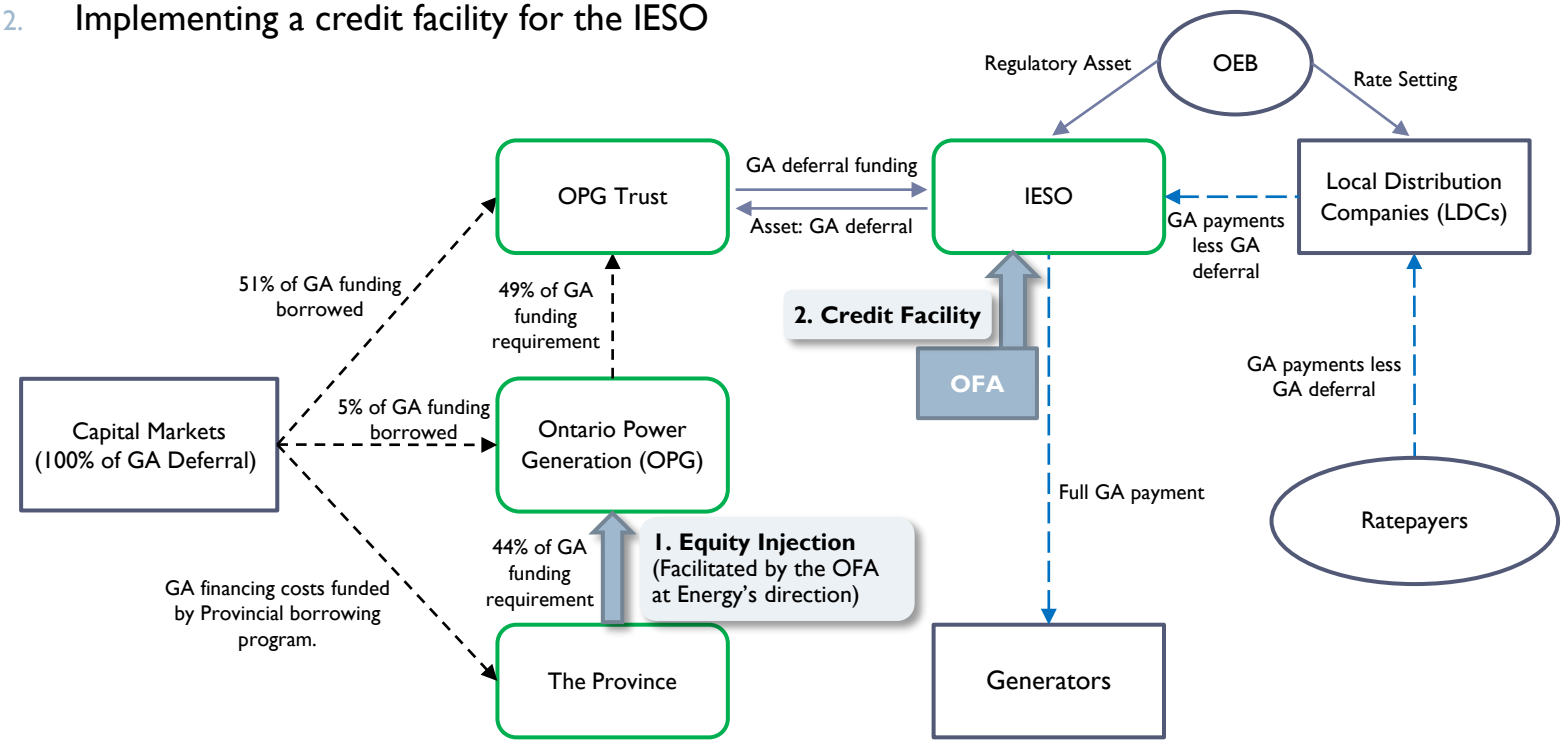
f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

* Amounts are illustrative and based on an assumed deferred cost, or regulatory of $2.5 billion.

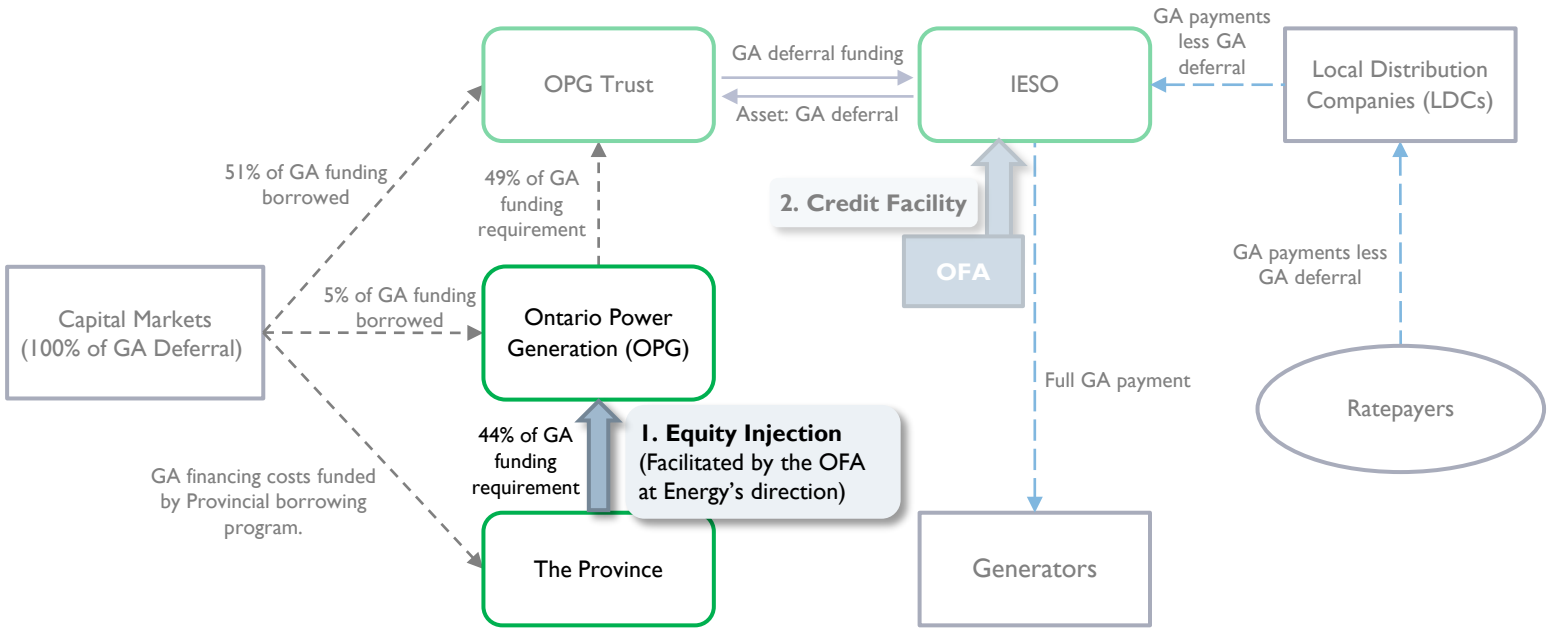
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO



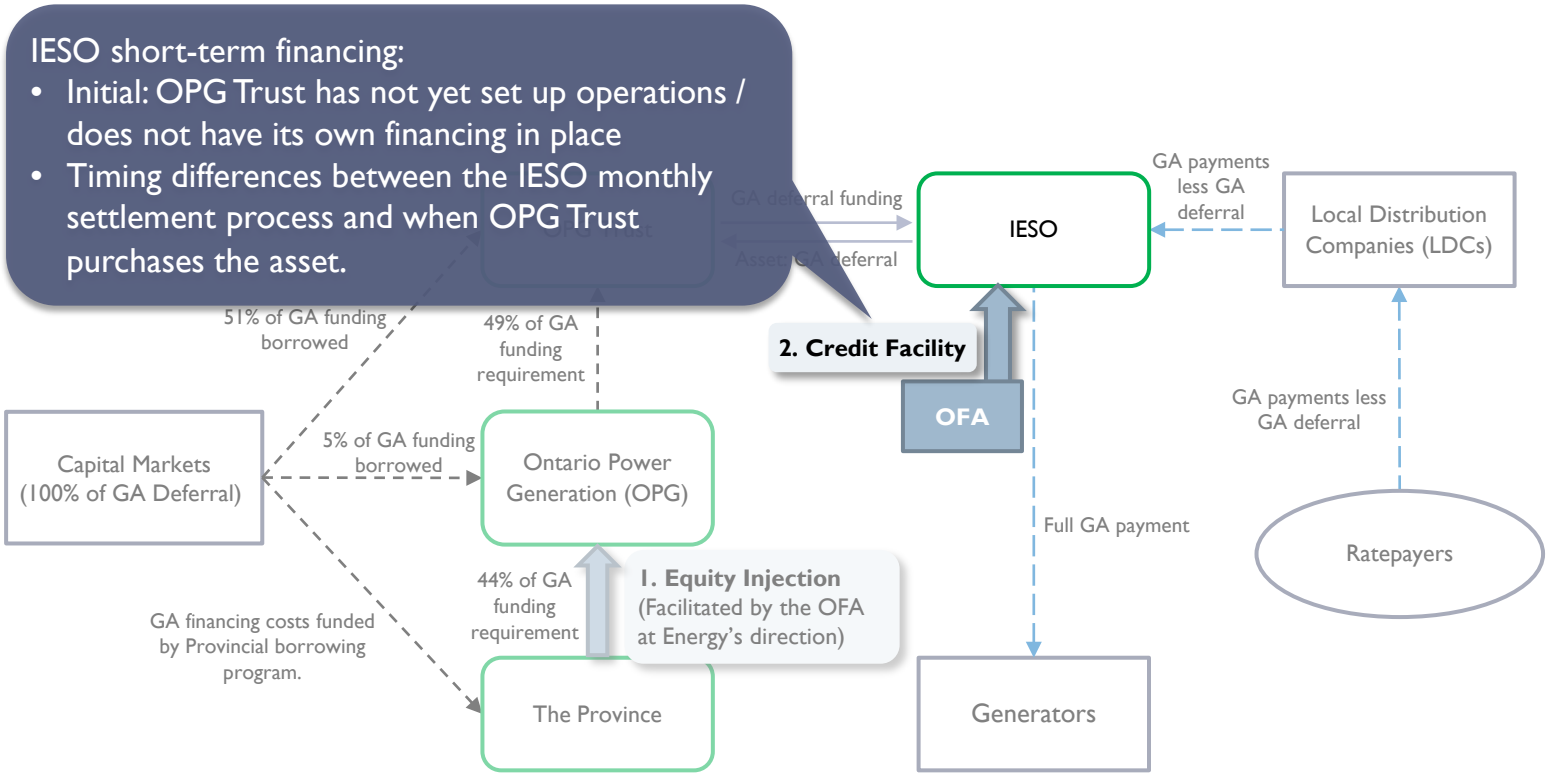
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1 bn related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which
  - on consolidation into Public Accounts, would be offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

GA Financing: Illustrative Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject:	RE: OFA Audit Risk Management Committee Deck
Date:	Monday, June 12, 2017 4:05:29 PM

OK will do. Thx

From: Ronald Kwan
Sent: Monday, June 12, 2017 4:05 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

Please send the deck without notes, and perhaps best as a pdf. Could remove "draft" too in the upper corner.

I did look at the notes in an earlier draft you sent, and made a few edits (unmarked).

Thanks,
Ron

From: Bruno Amara
Sent: June 12, 2017 4:03:09 PM
To: Ronald Kwan
Cc: Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject: RE: OFA Audit Risk Management Committee Deck

Ron

We have notes on some slides – I think they are OK, but I did not vet as closely as slides. We'll send the deck without notes, but maintain those for your use. Are you OK with that approach?

Bruno

From: Ronald Kwan
Sent: Monday, June 12, 2017 3:58 PM
To: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

How about "recovery" instead of "repayment"?

Ron

From: Shajee Kathirgamanathan
Sent: June 12, 2017 2:57:52 PM
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck

Thanks Ron.

We're fine with your edits, but made one additional change on Slide 13, marked in green.

It's referring to a 'difference' but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan

Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.
>
> We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.
>
> The v21_clean file can also be found in this folder.
>
> Thanks,
> Shajee
>
> **Shajee Kathirgamanathan**
> Senior Advisor
> Electricity Finance Branch, Corporate and Electricity Finance Division
> Ontario Financing Authority
> Office: 416-325-1402 | Mobile: 647-294-3359
> shajee.kathirgamanathan@ofina.on.ca

From: Bruno Amara
To: Ronald Kwan
Cc: Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject: RE: OFA Audit Risk Management Committee Deck
Date: Monday, June 12, 2017 4:03:10 PM

Ron

We have notes on some slides – I think they are OK, but I did not vet as closely as slides. We'll send the deck without notes, but maintain those for your use. Are you OK with that approach?

Bruno

From: Ronald Kwan
Sent: Monday, June 12, 2017 3:58 PM
To: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

How about "recovery" instead of "repayment"?

Ron

From: Shajee Kathirgamanathan
Sent: June 12, 2017 2:57:52 PM
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck

Thanks Ron.

We're fine with your edits, but made one additional change on Slide 13, marked in green.

It's referring to a 'difference' but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359

shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan
Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.
>
> We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.

The v21_clean file can also be found in this folder.

Thanks,
Shajee

Shajee Kathirgamanathan
Senior Advisor
Electricity Finance Branch, Corporate and Electricity Finance Division
Ontario Financing Authority
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From:	Bruno Amara
To:	Ronald Kwan
Cc:	Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject:	RE: OFA Audit Risk Management Committee Deck
Date:	Monday, June 12, 2017 3:58:51 PM

Agree. We can “finalize” and send back?

From: Ronald Kwan
Sent: Monday, June 12, 2017 3:58 PM
To: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

How about "recovery" instead of "repayment"?

Ron

From: Shajee Kathirgamanathan
Sent: June 12, 2017 2:57:52 PM
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck

Thanks Ron.

We’re fine with your edits, but made one additional change on Slide 13, marked in green.

It’s referring to a ‘difference’ but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan

Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan
Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.
>
> We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.
>
> The v21_clean file can also be found in this folder.
>
> Thanks,
> Shajee

Shajee Kathirgamanathan
Senior Advisor
Electricity Finance Branch, Corporate and Electricity Finance Division
Ontario Financing Authority
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Shajee Kathirgamanathan
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck
Date: Monday, June 12, 2017 2:57:52 PM
Attachments: OFA ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks Ron.

We're fine with your edits, but made one additional change on Slide 13, marked in green.

It's referring to a 'difference' but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan
Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.
>
> We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.
>
> The v21_clean file can also be found in this folder.
>
> Thanks,
> Shajee
>
> **Shajee Kathirgamanathan**
> Senior Advisor
> Electricity Finance Branch, Corporate and Electricity Finance Division
> Ontario Financing Authority
> Office: 416-325-1402 | Mobile: 647-294-3359
> shajee.kathirgamanathan@ofina.on.ca

DRAFT

Ontario's Fair Hydro Plan
OFA Audit & Risk Management Committee Briefing

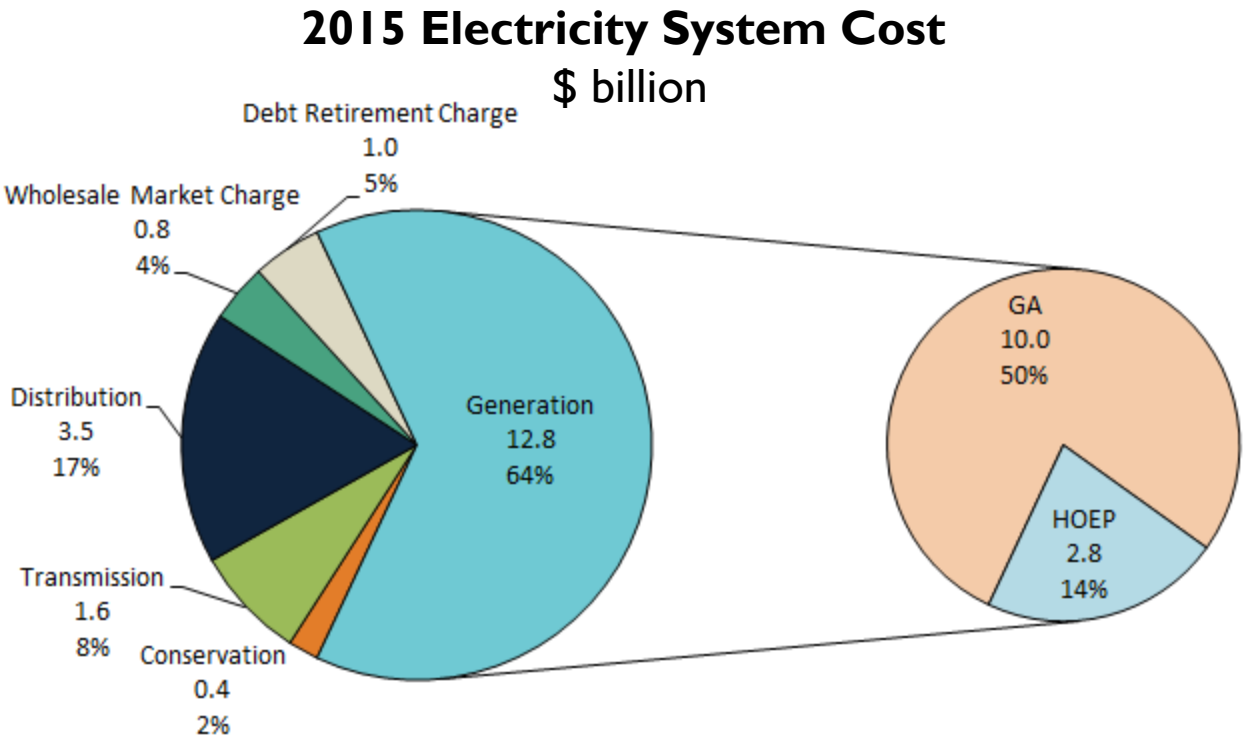
Corporate and Electricity Finance Division
June 16, 2017

Contents

- Context: Ontario's Electricity Market
- Overview: Ontario's Fair Hydro Plan
- Global Adjustment Refinancing
- OFA Involvement
  - Equity Injection
  - IESO increased credit facility
- Global Adjustment Refinancing Risks / Sensitivities
  - Financial modelling assumptions

Context: Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.



DEFINITIONS:

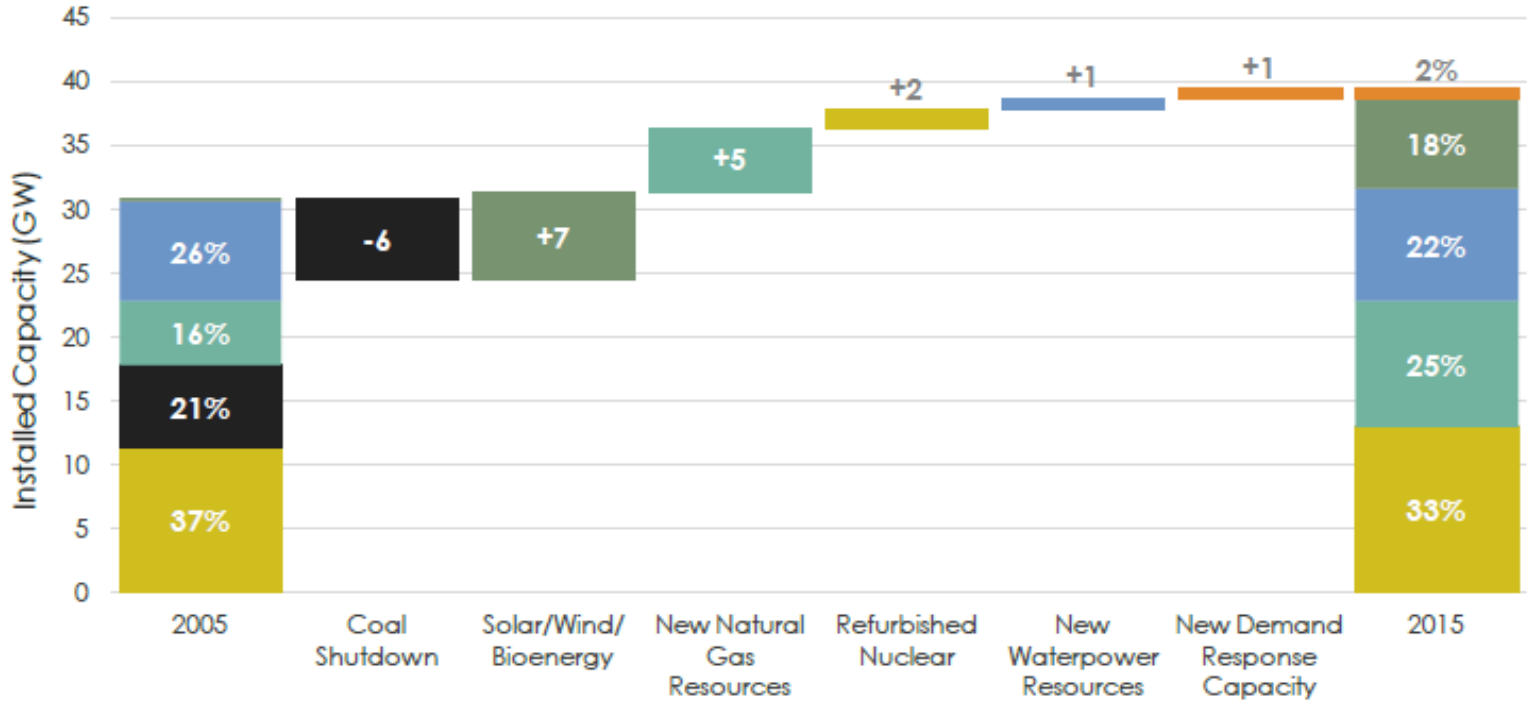
GA: The "Global Adjustment" accounts for differences between the market price of electricity and the rates paid to regulated and contracted generators and for conservations programs. The GA is collected from all electricity rates payers in Ontario

HOEP: Hourly Ontario Electricity Price.

Source: IESO

Context: Significant Change in Supply Mix

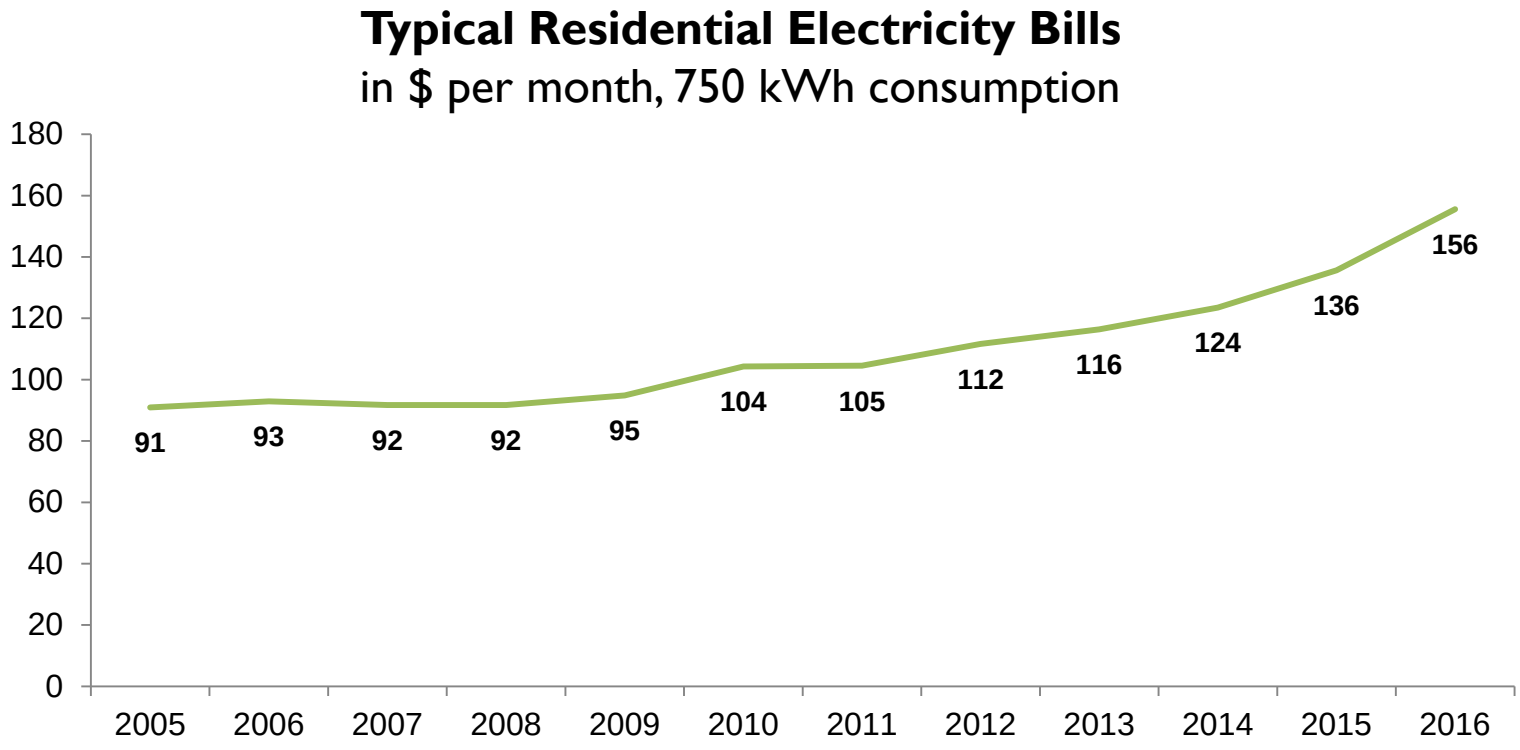
- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: IESO

Context: Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).



Source: Ministry of Energy

Overview:
Ontario's Fair Hydro Plan

DRAFT

Overview:
The Ontario Fair Hydro Plan ("OFHP")

- On May 31, 2017, the government passed the Ontario Fair Hydro Act, 2017, to enable the implementation of the OFHP, 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).

- The measures that make up the 25 per cent average reduction include
  - Refinancing a portion of the Global Adjustment (GA) to allocate fairly the costs of Ontario's contracts for electricity infrastructure investments over the expected lifecycle of the generation infrastructure assets.
    - The Global Adjustment recovers a portion of the commodity supply and conservation costs of electricity.
  - The Ontario Rebate for Electricity Consumers, for an amount equal to the provincial portion of the HST, which took effect on January 1, 2017.
  - Shifting funding of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from electricity ratepayers to the province.

- People with low incomes, those served by local distribution companies (LDCs) with the highest distribution costs, OESP recipients and On-Reserve First Nation households would benefit from even greater reductions to their electricity bills.

DRAFT

Overview: The Ontario Fair Hydro Plan (cont'd)

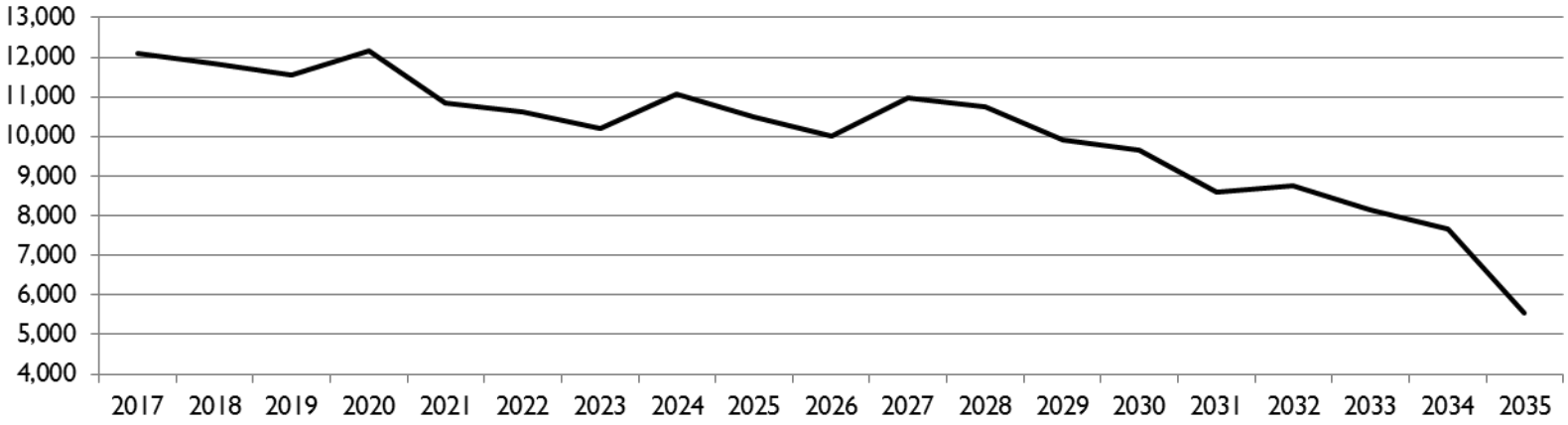
- Other measures that make up the Fair Hydro Plan include
  - Expanding the Industrial Conservation Initiative (ICI) to include electricity consumers, in the manufacturing and certain other sectors including greenhouses, with an average monthly peak demand of greater than 500 kW and less than 1 MW.
  - Expanding the OESP, by providing 50 per cent more support in the form of monthly credits for people with low incomes and increasing eligibility, effective May 1, 2017.
  - Establishing an Affordability Fund that will be accessible to LDCs for customers who do not qualify for low-income conservation programs and who are unable to undertake energy efficiency improvements without financial assistance.
  - Providing on-reserve First Nations households with a 100 per cent credit of the delivery line on their monthly electricity bills.
  - Enhancing the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to about 800,000 customers and shift costs from ratepayers to provincial revenues. This would include customers served by local distribution companies (LDCs) with the highest rates.
  - Improving energy sector efficiency and modernize the province's electricity market, building on the collaboration of the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).
- The government-funded measures (OESP, RRRP, on-reserve credits and the Affordability Fund) have been estimated to cost the government about $2.5 billion in the first three years (and would have an on-going annual cost to government).

Refinancing the Global Adjustment

Refinancing the Global Adjustment

- Refinancing the Global Adjustment (GA) provides significant and immediate rate relief by spreading the cost of electricity investments over a longer period of time.
- Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction (i.e., the financed portion) in the GA would be about $2.5 billion per year on average over the first ten years.
- This measure would share the associated costs more fairly. The illustrative chart below shows how Global Adjustment (GA) cost is front-end loaded and forecast to decline over time.
- Energy and IESO forecasts are subject to update, including as part of the Ministry of Energy's current Long-term Energy Plan update process.

Forecast Global Adjustment Cost (nominal $ million)



Source: IESO

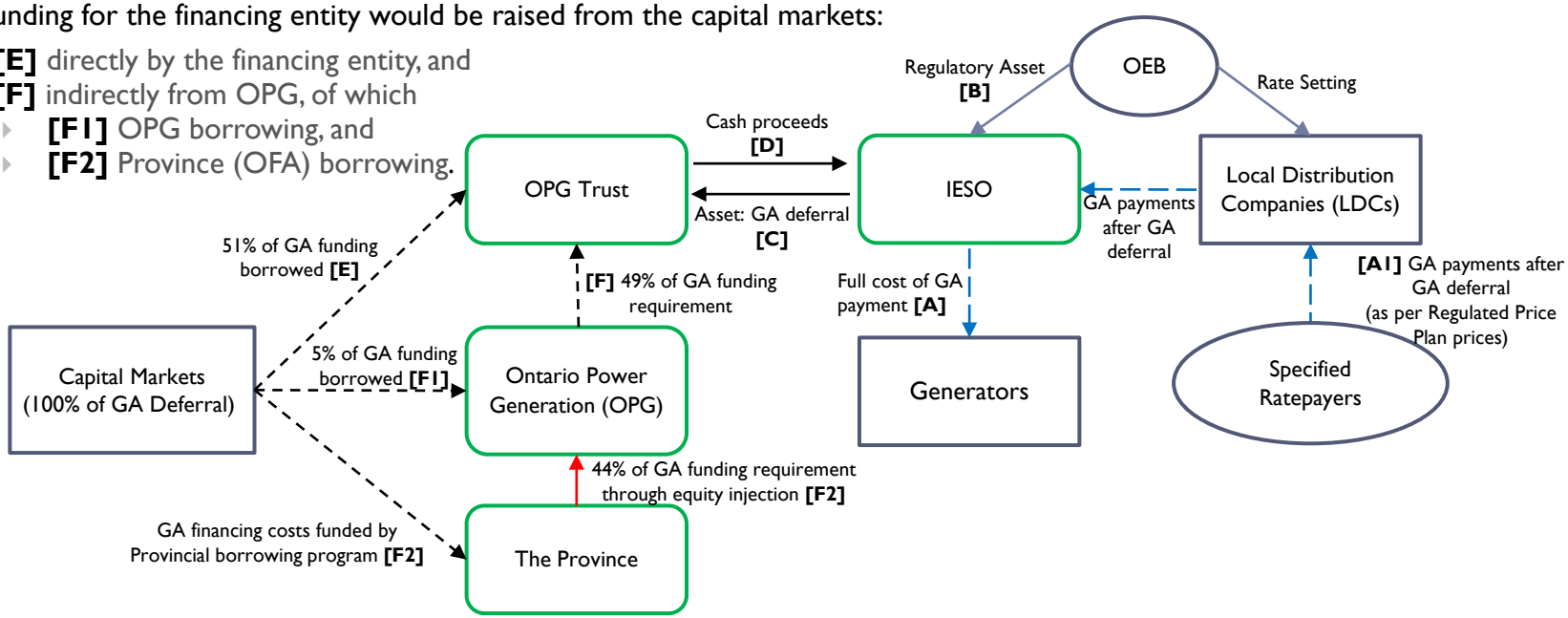
DRAFT

Global Adjustment Financing: Policy Rationale

- The purpose of the Global Adjustment refinancing is to
  - Ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers
  - Recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province, and
  - Align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.
- The majority of the province's electricity generators are under 20-year contracts. Many of these generators will be able to operate past their contract term.
- By recognizing that generation assets are expected to continue to provide benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.
- In the early years, a portion of the costs covered by the GA would be financed to reduce pressure on electricity ratepayers.
- In the later years, when some system costs are expected to be reduced due to continued operation of existing assets under 20-year contracts, the cost of financing would be recovered from ratepayers through a "Clean Energy Adjustment".

GA Financial Structure

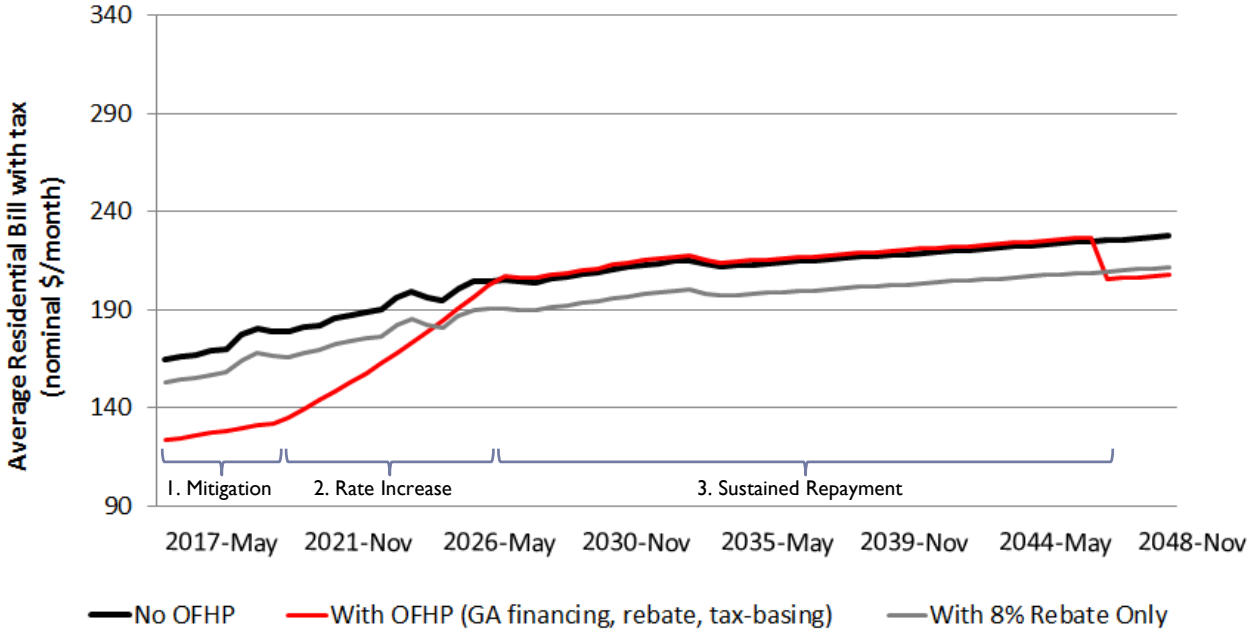
- Through the OFHP, GA costs, including refinancing costs, will be recovered from ratepayers over a longer period of time.
  - The GA refinancing framework will be implemented through the IESO and Ontario Power Generation (OPG).
  - Under the OFHP, OPG would be able to establish a special purpose vehicle (OPG Trust) financing entity.
- **[A]** Under the OFHP, the IESO will continue to pay generators their contracted and regulated prices. **[A1]** However, LDC payments will be less, as Regulated Price Plan prices are set based on a portion of the GA deferred in order to support the initial 25% reduction (and subsequent adjustments).
- **[B]** The IESO will set up a deferral account, vis a vis a 'regulatory asset', with a right to recover the deferred costs and financing costs, as authorised by the OEB.
- **[C]** Under the Act, the Independent Electricity System Operator (IESO) would be able to sell the 'right to collect' deferred future revenue from ratepayers to the financing entity in return for cash proceeds **[D]**.
- The funding for the financing entity would be raised from the capital markets:
  - **[E]** directly by the financing entity, and
  - **[F]** indirectly from OPG, of which
    - **[F1]** OPG borrowing, and
    - **[F2]** Province (OFA) borrowing.



DRAFT

Global Adjustment Financing

- GA Financing structure and bill impacts can be thought of as having three phases (see illustrative chart below)



Phase 1: Mitigation

- 2017 residential bill 25% on average lower than original projection (pre-8% Ontario Rebate for Electricity Consumers).
- Increase in bill capped to 2% per year until 2021.

Phase 2: Rate Increase

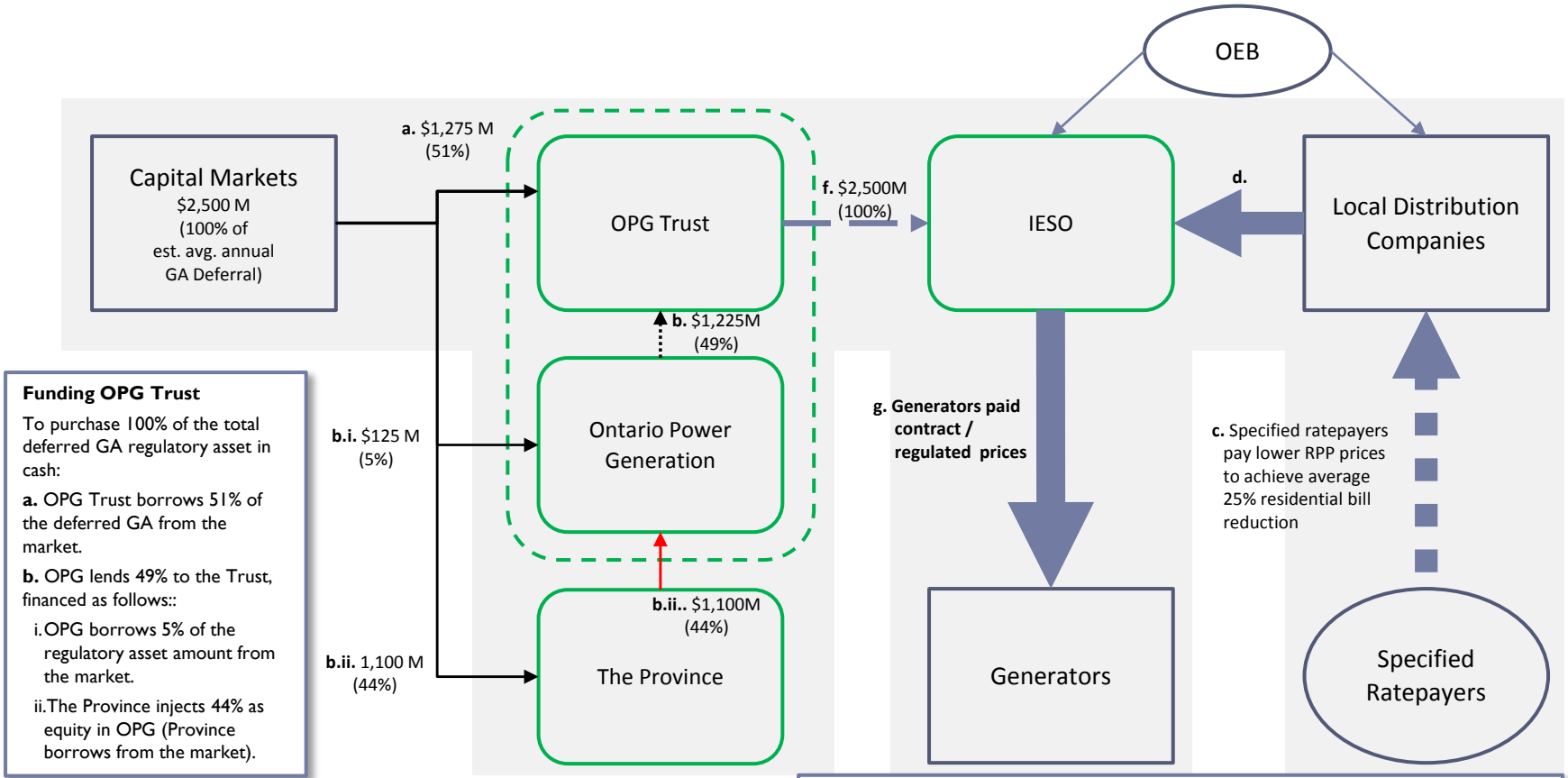
- Residential bills continue lower than without the OFHP; however, not by 25% on average.
- Bill increases each year, limiting overall deferral and borrowing.
- Planned increases for the above purpose projected to end in 2028 when sustained repayment starts.

Phase 3: Sustained Repayment

- Bill higher than projection, excluding the GA deferral, until 2047 (estimated).
- Difference between with OFHP (red) and 8% rebate (grey) only represents repayment of deferred GA and financing.

DRAFT

GA Financing Structure: Illustrative Fund Flows* - Mitigation Phase



Funding OPG Trust

To purchase 100% of the total deferred GA regulatory asset in cash:

a. OPG Trust borrows 51% of the deferred GA from the market.

b. OPG lends 49% to the Trust, financed as follows::

i. OPG borrows 5% of the regulatory asset amount from the market.

ii. The Province injects 44% as equity in OPG (Province borrows from the market).

Deferral Mechanism

c. Specified ratepayers pay RPP prices, including the non-deferred portion of the GA to LDCs.

d. The LDCs remit this amount to the IESO ...

e. …The IESO recognizes a regulatory asset – the right to collect the deferred amount, and a financing cost, from ratepayers in the future.

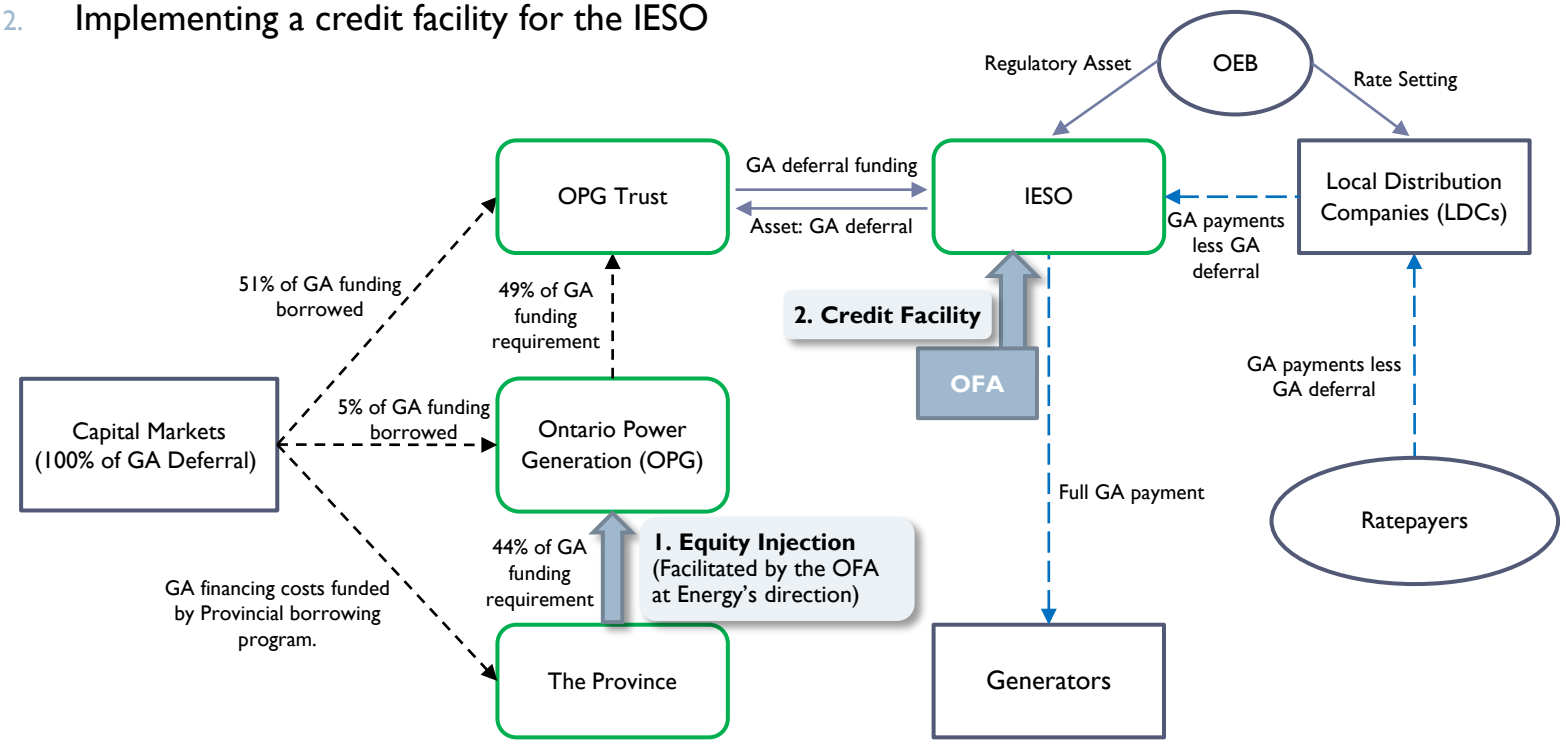
f. IESO sells this asset for cash to OPG Trust.

g. IESO uses the proceeds from the sale of the regulatory asset and the collection amount from LDCs to pay the full amount of the GA cost to Generators (and conservation costs).

* Amounts are illustrative and based on an assumed deferred cost, or regulatory of $2.5 billion.

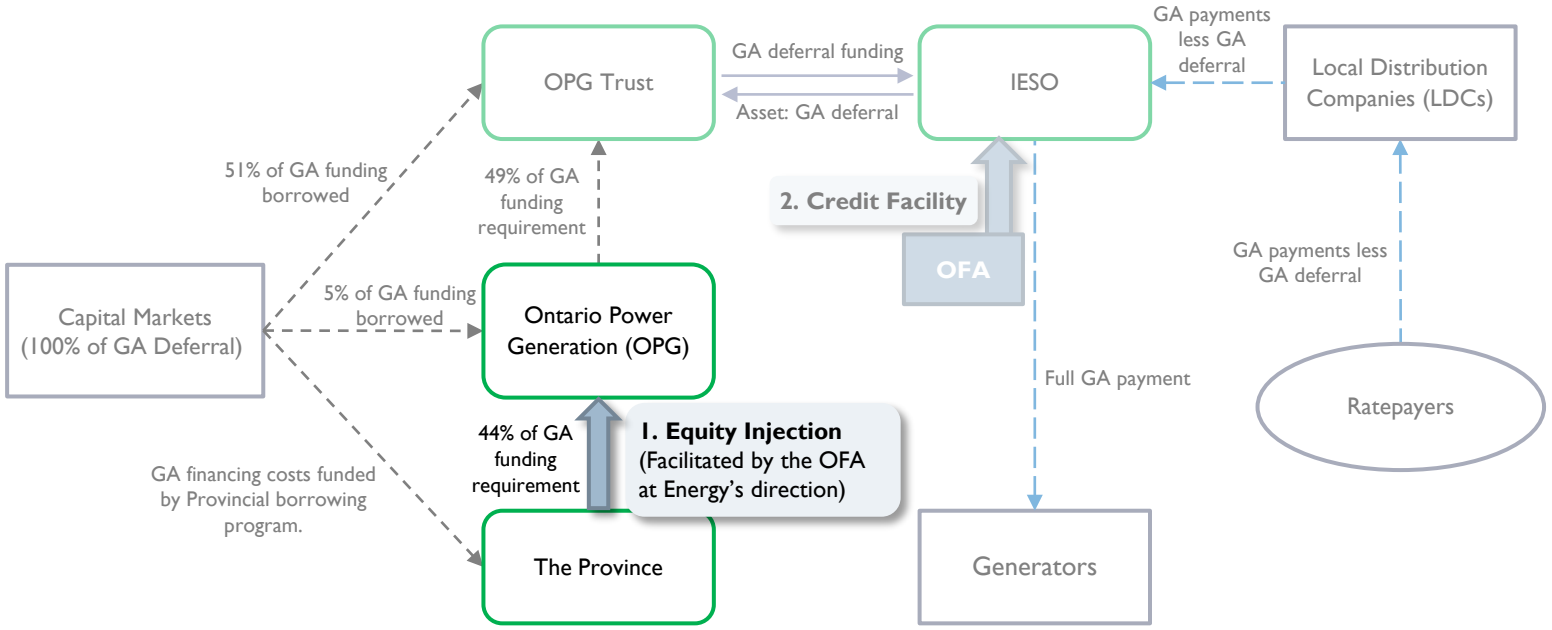
OFA Involvement with FHP Implementation

- Two aspects of the GA Financing:
  1. Facilitating the mechanism for equity injections into Ontario Power Generation. Ministry of Energy as shareholder has received an appropriation through the Treasury Board process for an operating asset expenditure to acquire the equity.
     - OFA would also be managing the Provincial borrowing program, including to support the equity injection.
  2. Implementing a credit facility for the IESO



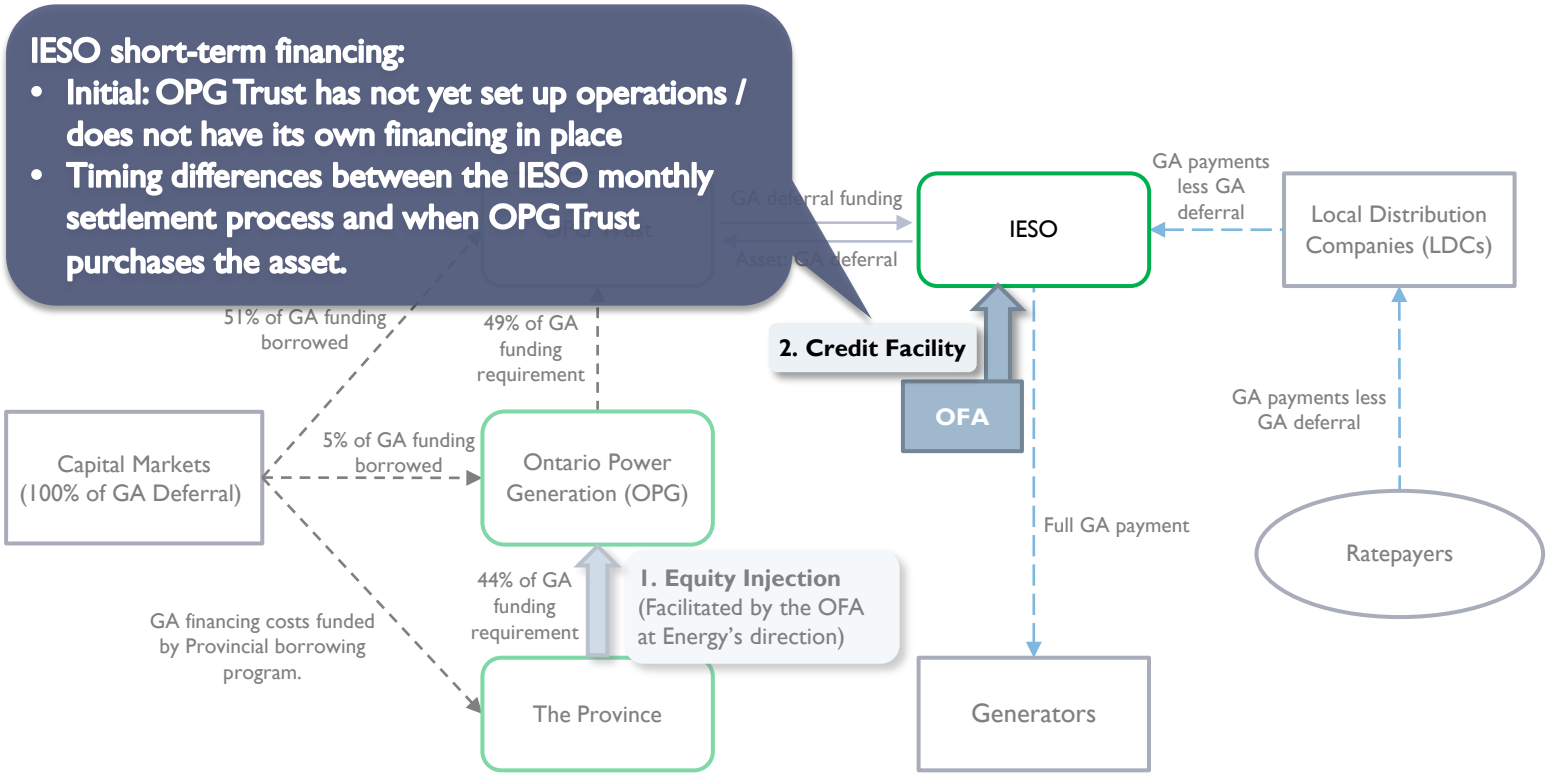
1. Equity Injection

- The 2017 Budget includes in the Ministry of Energy Estimates an investment operating asset of $1.1 bn related to the Province's equity injection to OPG. OPG would provide financing to the Trust through sub-ordinated debt, as part of the OPG Trust financing to regularly purchase IESO's regulatory asset through 2017-18.
- The structure would
  - increase gross debt of the Province (to finance the equity injection in OPG),
  - increase net investment in OPG (so no net debt impact),
  - increase interest on debt related to that external debt, which
  - on consolidation into Public Accounts, would be offset by increased earnings of OPG from sub-debt interest revenue.



2. OFA/IESO Credit Facility

- The Fair Hydro Act, 2017 provides for the IESO to sell the right to recover those deferred amounts of the global adjustment from specified consumers in the future (the "regulatory asset").
- It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG Trust"). The cash received would be used by the IESO to fund the current Global Adjustment deferral shortfall.



Risks / Cost Sensitivities

Global Adjustment Refinancing Model Assumptions

- Projected Global Adjustment Refinancing costs are affected by actual system costs and consumption, and actual interest rates.
- Variances from these key assumptions could affect actual refinancing costs, etc.

- Interest rates
  - Higher/lower Interest rates would lead to higher/lower refinancing costs
  - For example, a 1.5 percentage point lower interest rate assumption, compared to an illustrative 5% case used by the Ministry of Energy, would halve estimated cumulative interest costs, from about $21 bn to $11 bn.

- Electricity demand
  - Lower/higher electricity demand due to fewer consumers or lower/higher consumption among some consumers would increase/decrease Clean Energy Adjustment costs for remaining consumers.

- System Costs
  - Ministry of Energy is developing the updated Long-term Energy Plan (LTEP), expected to be released in about summer 2017. The LTEP is expected to include measures to continue to reduce system costs.
  - Actual system costs are expected to also be affected by other factors, such as the Ontario Energy Board rate application process.

Appendix

DRAFT

GA Financing: Illustrative Net Debt Impacts

Province of Ontario - Consolidated Statement of Financial Position

As at March 31, 2016 ($ Millions)		**GA Financing Impacts Est. Average Annual**
Liabilities		
Accounts Payable and Accrued Liabilities (Schedule 5)	19,361	
Debt (Note 2)	327,413	**1,100**
Other Long-Term Financing (Note 4)	14,145	
Deferred Revenue and Capital Contributions (Note 5)	10,779	
Pensions and Other Employee Future Benefits (Note 6)	12,107	
Other Liabilities (Note 7)	4,905	
	388,710	
Financial Assets		
Cash and Cash Equivalents	13,600	
Investments (Note 8)	21,765	
Accounts Receivable (Schedule 6)	11,059	
Loans Receivable (Schedule 7)	11,545	
Other Assets	1,936	
Investment in Government Business Enterprises (Schedule 9)	23,572	**1,100**
	83,477	
Net Debt	(305,233)	**0**
Non-Financial Assets		
Tangible Capital Assets (Note 9)	102,536	
Accumulated Deficit	(202,697)	

- Increased borrowing required to fund equity injections.
- Provincial debt will increase.

- Equity injections increase investment in OPG

- Offsetting impacts lead to zero net debt impact

From:	Deena Padamadan
To:	Shajee Kathirgamanathan; Ronald Kwan; Bruno Amara
Cc:	John Kim
Subject:	RE: OFA Audit Risk Management Committee Deck
Date:	Monday, June 12, 2017 4:19:53 PM

Thanks all. I'll send the pdf to Legal.
Deena

From: Shajee Kathirgamanathan
Sent: Monday, June 12, 2017 4:11 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: OFA Audit Risk Management Committee Deck

Hi Ron,

Please find attached the clean (final) deck.

The first attachment is the PDF for distribution. The second one is Powerpoint with notes for your reference.

Files also found here.

Thanks,
Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 4:05 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

Please send the deck without notes, and perhaps best as a pdf. Could remove "draft" too in the upper corner.

I did look at the notes in an earlier draft you sent, and made a few edits (unmarked).

Thanks,
Ron

From: Bruno Amara
Sent: June 12, 2017 4:03:09 PM
To: Ronald Kwan
Cc: Deena Padamadan; Shajee Kathirgamanathan; John Kim
Subject: RE: OFA Audit Risk Management Committee Deck

Ron

We have notes on some slides – I think they are OK, but I did not vet as closely as slides. We'll send the deck without notes, but maintain those for your use. Are you OK with that approach?

Bruno

From: Ronald Kwan
Sent: Monday, June 12, 2017 3:58 PM
To: Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

How about "recovery" instead of "repayment"?

Ron

From: Shajee Kathirgamanathan
Sent: June 12, 2017 2:57:52 PM
To: Ronald Kwan; John Kim; Bruno Amara
Cc: Deena Padamadan
Subject: RE: OFA Audit Risk Management Committee Deck

Thanks Ron.

We're fine with your edits, but made one additional change on Slide 13, marked in green.

It's referring to a 'difference' but there are 3 lines. Just added some text for clarity.

File, v22, attached and found here:
S:\Users\CEF\Hydro 2017\OFA\Audit\OFA ARMC - FHP Briefing\OFA_ARMC - FHP Briefing (2017 06 01 v22).pptx

Thanks,

Shajee

Shajee Kathirgamanathan
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
Sent: Monday, June 12, 2017 2:25 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Re: OFA Audit Risk Management Committee Deck

Hi,

I made some suggested wording edits on slide 13. Please review.

And I added in the OEB on slide 15 too (but not the following ones -- should be okay).

Ron

From: Deena Padamadan
Sent: June 12, 2017 1:36:11 PM
To: Ronald Kwan
Subject: Fwd: OFA Audit Risk Management Committee Deck

Hi Ron- please see attached EFB's edits for your review.
Thanks,
Deena

Begin forwarded message:

> **From:** Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
> **Date:** June 12, 2017 at 1:34:25 PM EDT
> **To:** Deena Padamadan <Deena.Padamadan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: OFA Audit Risk Management Committee Deck**
>
> Hi Deena,
>
> Please find attached, our revised deck for the OFA's Audit Risk Management Committee on the Fair Hydro Plan.

We addressed the comments Ron made over the weekend. I believe he'll want to review prior to sending off.

The v21_clean file can also be found in this folder.

Thanks,
Shajee

Shajee Kathirgamanathan
Senior Advisor
Electricity Finance Branch, Corporate and Electricity Finance Division
Ontario Financing Authority
Office: 416-325-1402 | Mobile: 647-294-3359
shajee.kathirgamanathan@ofina.on.ca

From: Ronald Kwan
To: Anna Strathy
Subject: RE: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:34:58 PM

Thanks Anna.

I understand that both IESO and Energy have been inquiring about the status of the intercept and getting the credit facility in place. And I understand that the draft of the letter has been circulated and is otherwise ready to go.

Ron

From: Anna Strathy
Sent: October-25-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OFA-IESO Credit Agreements

Thanks Ron. I'm following up with Gadi.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 25, 2017, at 4:32 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
>
> I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.
>
> In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?
>
> Ron

From: Ken Kandeepan
To: Ronald Kwan
Subject: RE: OFHP Deck
Date: Sunday, June 11, 2017 12:18:49 PM

Thanks Ron, looks pretty good. I have some minor suggested changes as follows:

Page 15: "The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded". These expenses are already part of the fiscal plan and since the Government is projecting a balanced budget, the shift of these expenses from the ratepayer to the taxpayer does not impact our borrowing program. Suggest that this be deleted.

Page 16 last bullet: "offset by increased earnings of OPG from sub-debt interest revenue" I would revise as follows: "Upon consolidation, offset by increased earnings of OPG from sub-debt interest revenue"

That's it.

Thanks

Ken k

From: Ronald Kwan
Sent: Saturday, June 10, 2017 3:19 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: OFHP Deck

Hi Ken,

As you know, it was suggested that there be a presentation on the FHP for the OFA Board/ARMC.

Attached is a work-in-progress deck that staff are working on. It does not get into great detail, outlining the elements of the FHP, with a bit more on the GA financing structure and the OFA touchpoints on borrowing for the equity injection and notes the credit facility for IESO. Risks are also high-level, and it does not get into accounting risk, leaving that discussion as one between the AG and Province, as was positioned at the OEFC AC. I might think there may be verbal discussions.

Comments welcome.

Ron

From:	Ronald Kwan
To:	John Kim; Bruno Amara
Subject:	RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx
Date:	Friday, June 09, 2017 9:32:28 AM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_Markup MOFLegal+EFB_Markup.docx

Hi John,

Some comments, as attached.

Ron

From: John Kim
Sent: June-08-17 5:15 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Ron,

This is still very much work-in-progress with Toby signalling additional materials either following Energy Legal's response or before.

The second attachment is with some additional edits from EFB.

We are aiming to chat with Toby tomorrow AM to close a number of loose ends.

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Thursday, June 08, 2017 3:26 PM
To: John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Elcombe, James (MOF) <James.Elcombe@ontario.ca>
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

John – please see attached some initial comments. This will obviously have to evolve as we hear back on the final form and updated materials.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June 8, 2017 8:16 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Bruno Amara; Salman Qadir
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Malle, Toby,

Could you pls. review and provided any edits?

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 07, 2017 6:02 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi John,

Thanks. A few comments and suggestions.

Ron

From: John Kim
Sent: June-07-17 16:11
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Ron,

Pls. see attached note. Comments are welcome.

Fyi, spoke to Nadine before the meeting at 2pm about equity injection (bv of shares) and also this material that we would be coming to them for input/comments.

Thanks,

John

From: Salman Qadir
Sent: Wednesday, June 07, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi,

Attached is the first draft of the note for FAA section 28 for the indemnities. I'm sure MOF legal will have language to edit/add.

Saved here:
Z:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Salman

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

DRAFT: Confidential and Commercially Sensitive Advice to the Minister

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"), and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the ~~participation~~implementation of the Ontario Fair Hydro Plan ("O~~N~~FHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

- The~~is~~ Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.
- The Ministry of Energy indicates both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their pre-OFHP typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").
- In addition, statutory protections do not indemnify for costs relating to defending a claim.

RECOMMENDATION

- IESO and OPG have stated that ~~the requirement of~~ these indemnities are~~is~~ required for their participation in the implementation of ~~the~~ OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("M~~OE~~ENE") states that the likelihood of this indemnity being called upon is low and ~~should it be called,~~ that the fiscal exposure is unquantifiable at this time~~, should it be called~~.

Commented [A1]: Would Energy think it fair to add this wording to its business case?

Commented [A2]: Is this expected, and when? Do we have a draft?

Commented [A3]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Where does it say that the likelihood of indemnity being called upon is low?

- MOENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

ANALYSIS

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from any all claims, liabilities, costs, or losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals arise to the corporation, him or her (respectively) in relation ofto any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHPFair Hydro Plan (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or sa subsidiary). as a result of their direct roles in carrying out the activities related to the OFHP Act.

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchasesale of the deferred assets under the Global Adjustment ("GA") structure ("regulatory assets").

MOENE states that both OPG and the IESO are anticipated to carry outthe OFHP Act activities of both OPG and the IESO that would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, Tthis creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Commented [A4]: Is TBS okay with this?

Commented [A5R4]: The earlier draft PEMD note seems to suggest that Energy would need an appropriation for this, as this type of expenditure is not covered under existing FHP lines. Has this analysis been updated and Energy could rely on existing appropriations lines and room?

"Voted Appropriations
Although the Ministry indicates the risk associated with providing the indemnities are undeterminable, the amount of accumulated debt is quite significant. This raises a question about whether the Ministry has sufficient, if any, appropriations in place for 2017-18 to enter into the agreement to provide the indemnities.
- Sections 11.3(1) of the FAA indicates no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation.
- Section 11.2(1) indicates no appropriation shall be charged with an amount that is for a purpose other than that for which the appropriation was provided.

Currently there are no explicit appropriations for GA refinancing other than the $1.1B investment asset for the projected OPG equity injection requirements in 2017-18. There is about $500M in Transfer Payments related for the Electricity Social Programs, that are to be funded from voted appropriations starting in 2017-18 should enabling legislation pass.

Commented [A6]: Where does it say this?

Commented [A7]: s.28 notes usually talk about mitigation, as does the contingent liability table. Anything we can add here?

Commented [A8]: It doesn't say "direct".

Commented [A9]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A10]: Something seems to be msing here

Commented [A11]: Fair to insert?

Commented [A12]: Would Energy change this to "historical" in its business case?

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could ~~impa~~affect ~~the~~ OPG and IESO ~~directors~~'s willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is ~~anticipated~~proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are ~~essentially~~ requesting to be indemnified for their activities that may be found to have not be~~en seen to be~~ conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected~~anticipated~~ to carry out activities under the OFHP ~~in the implementation of the OFHP Act~~ that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability.

- The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation.
  - Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?
- ~~(S~~statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees"~~)~~.
  - Since OPG is an OBCA corporation, directors and officers of OPG are subject to the standard set out in that Act ~~which is….~~[NTD: Should this reference the OBCA standard?].
  - The standard applicable to directors of IESO is set out in s. 12 of the Electricity Act, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Commented [A13]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A14]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Commented [A15]: I think we need to include a subsection on existing indemnities, and when the proposed indemnities would not apply.

And lead this sub-section with the protections under statute, and why they may not be considered sufficient – claims on "good faith" as a question of fact to be considered by a court if a claim is brought forward.

And we should mention the waiver too.

Commented [A16]: Is this more of a "note to draft" to be answered?

Commented [A17]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Commented [A18]: Spell this out first time?

Formatted: Bulleted + Level: 2 + Aligned at: 0.75" + Indent at: 1"

- So the standard is similar for both OPG and IESO directors.
- ~~The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation. Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?~~

Commented [A19]: Is this more of a "note to draft" to be answered?

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

> *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."*

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

> *"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."*

2. Potential for Fiscal Exposure of the OFHP Act

~~On May 24, 2017, the Ontario Auditor General ("AG") provided remarks to The Standing Committee on Justice Policy on the then proposed *Ontario Fair Hydro Plan Act, 2017*. The AG commented that the GA structure that does not impact the Province's net debt or annual deficit is legislated accounting and not in accordance with Canadian Public Sector Accounting Standards.~~

In addition to potential fiscal impact from a call on the indemnity, there may be a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposesed agreements to indemnify the IESO and OPG, thei~~s could weaken the~~ case for the anticipated accounting treatment ~~that the Province is relying that underpins~~of the GA structure could be weakened.

Commented [A20]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

Commented [A21]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

[NTD: Should include a section that is more descriptive of the content of the proposed indemnity agreement too including exceptions for dishonesty, gross negligence and wilful misconduct, the issue re: due diligence as well as the waiver and the broad scope of the types of damages covered.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.
- The ~~proposed~~ 25 per cent rate relief ~~measure~~ includes the ~~8 per cent~~ rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- Changes to refinance a portion of the Global Adjustment ("GA") are ~~proposed to be~~ a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:
  - IESO – proposed legislation would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the OFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO.
  - ~~o~~ OPG – GA refinancing would result in a deferred GA amount that OPG is expected to fund and finance from a special purpose entity that OPG creates (i.e. a financing entity) and that associated risks are beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- The ~~G~~government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.
- ~~The implementation of the OFHP Act will involve the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities.~~

Formatted: Indent: Left: 0.28", Bulleted + Level: 1 + Aligned at: 0" + Tab after: 0.28" + Indent at: 0.28", Tab stops: 0.55", List tab + Not at 0.28"

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara; Salman Qadir; Gavin He
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx
Date: Wednesday, June 07, 2017 6:02:26 PM
Attachments: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_Markup.docx

---

Hi John,

Thanks. A few comments and suggestions.

Ron

From: John Kim
Sent: June-07-17 16:11
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi Ron,

Pls. see attached note. Comments are welcome.

Fyi, spoke to Nadine before the meeting at 2pm about equity injection (bv of shares) and also this material that we would be coming to them for input/comments.

Thanks,

John

From: Salman Qadir
Sent: Wednesday, June 07, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN.docx

Hi,

Attached is the first draft of the note for FAA section 28 for the indemnities. I'm sure MOF legal will have language to edit/add.

Saved here:
Z:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Salman

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the ~~participation~~implementation of the Ontario Fair Hydro Plan ("ONFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

- The~~is~~ Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.

RECOMMENDATION

- IESO and OPG have stated that the requirement of these indemnities is required for their participation in the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

Commented [A1]: Is this expected, and when? Do we have a draft?

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- Ministry of Energy ("M~~O~~E~~E~~NE") states that the likelihood of this indemnity being called upon is low and ~~should it be called,~~ the fiscal exposure is unquantifiable at this time, should it be called.
- M~~O~~ENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

Commented [A2]: Is TBS okay with this?

ANALYSIS

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify and hold harmless the IESO and OPG (and its subsidiaries), as well as their respective directors, officers and employees,

from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out the activities related to the OFHP Act.

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, to facilitate the purchase~~sale~~ of the deferred assets under the Global Adjustment ("GA") structure.

M~~O~~ENE states that both OPG and the IESO are anticipated to carry out OFHP Act activities that otherwise fall outside the scope of their typical business activities and corporate mandates. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, this could ~~impa~~affect ~~the~~ OPG and IESO ~~directors~~'s willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Commented [A3]: Fair to insert?

Commented [A4]: Would Energy change this to "historical" in its business case?

Commented [A5]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A6]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Agreements the Minister of Energy is ~~anticipated~~proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are essentially requesting to be indemnified for their activities that may not be seen to be conducted in "good faith" for their respective corporations.

Since IESO and OPG are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (statutory protections from liability only extend to "good faith acts".

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

  > *"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."*

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

  > *"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."*

2. Potential for Fiscal Exposure of the OFHP Act

~~On May 24, 2017, the Ontario Auditor General ("AG") provided remarks to The Standing Committee on Justice Policy on the then proposed *Ontario Fair Hydro Plan Act, 2017*. The AG commented that the GA structure that does not impact the Province's net debt or annual deficit is legislated accounting and not in accordance with Canadian Public Sector Accounting Standards.~~

With the Province providing guarantee agreements, financial support through credit facilities and these agreements to indemnify the IESO and OPG, this could weaken the case for the anticipated accounting treatment ~~that the Province is relying that underpins~~of the GA structure.

Commented [A7]: I think we need to include a subsection on existing indemnities, and when the proposed indemnities would not apply.

And lead this sub-section with the protections under statute, and why they may not be considered sufficient – claims on "good faith" as a question of fact to be considered by a court if a claim is brought forward.

And we should mention the waiver too.

Commented [A8]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will to take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer relative to what the bills would otherwise have been without the OFHP.
- The proposed 25 per cent rate relief ~~measure~~ includes the ~~8 per cent~~ rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- Changes to the Global Adjustment ("GA") are ~~proposed to be~~ a component of the 25 per cent rate relief under the OFHP.
- The ~~G~~government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.
- ~~The implementation of the OFHP Act will involve the participation of the Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities.~~

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara; Salman Qadir
Subject: RE: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx
Date: Saturday, June 10, 2017 3:52:05 PM

Hi John,

Yes, please loop in OPCD.

I think the section Toby added has important information, but think about making it more reader-friendly.

Thanks,
Ron

From: John Kim
Sent: June-10-17 3:30 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx

Hi Ron,

Pls. see attached latest briefing note on the request for indemnities. The section added by Toby, I think, is very helpful.

On the accounting, we were thinking of sharing this with OPCD and have them add a section, if they wish to do so. Also, we discussed internally to share this with CMD and/or FTD as they are doing fair bit of work on that front.

Thanks,

John

From:	Ronald Kwan
To:	Steen Hume (CAB)
Cc:	Hilary Cox (ENE); Tim Christie (ENERGY)
Subject:	RE: OIC and IESO Financing
Date:	Wednesday, June 07, 2017 10:05:33 PM

Hi Steen,

The approval form is based on discussions with the IESO and the amount of credit facility requested. Note that while the IESO asked only for an initial five-year term for the facility, for the OIC, we are seeking approval for OFA borrowing room for the full term of the FHP so that the OFA would not need to return for a new OIC to be able to continue to provide a credit facility to IESO. Aside from that, the drafting is pretty plain, and IESO has not been asked to review. However, if any parts that you see need additional review, we can reach out.

As for the OIC, as stated, it has no FHP-related content and is attached more for information than a request for feedback.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: June-07-17 6:36 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Hilary Cox (ENE) <Hilary.Cox@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>
Subject: FW: OIC and IESO Financing

Thanks Ron. We'll take a look.

Has IESO provided comments on the attached materials.

Cheers, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-07-17 3:53 PM
To: Hume, Steen (ENERGY)
Subject: OIC and IESO Financing

Hi Steen,

As you'll recall, we are moving forward with OIC to expand the OFA's borrowing authority to facilitate the IESO's request for a credit facility from the OFA.

Attached is a draft approval form, which discusses this in reference to the FHP. Any comments you might have would be welcome.

As noted last week, the OIC itself is just on expanding the Province's ability to lend to the OFA (so that the OFA has the borrowing room to provide the facility), and the FHP is not mentioned in the

OIC.

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Bruno Amara
Cc:	Gavin He; John Kim; Shajee Kathirgamanathan; Salman Qadir
Subject:	RE: OIC s22 CIPA - OFA-IESO - LRC package
Date:	Wednesday, May 31, 2017 7:00:28 AM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v8_Markup.doc 2 - CIPA - OIC s22 - OFA_FHP - LRC_Memo CEO to DM v4_Clean__Markup.doc

Hi,

I made a few more edits, and to the memo to.

Ron

From: Bruno Amara
Sent: May-30-17 8:08 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

Ok thx. We'll connect back with Legal first thing tomorrow and send it on.

Sent from my iPhone

On May 30, 2017, at 8:02 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Thanks Bruno, et al.
>
> I accepted most of the edits (and reversed one).
>
> If you are okay with it, it could be sent as a draft to the DMO.
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** May-30-17 6:18 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** RE: OIC s22 CIPA - OFA-IESO - LRC package
>
> Hi Ron
>
> Sorry, as I was looking at clean versions I noticed a couple of other needed edits. E.g.

making end date 2047 consistent across documents. Please see attached. I went out on a limb and updated the French translation in 4- CIPA OIC, but will alert legal tomorrow morning to check everything. I'll hold off on clean versions for now pending a read through.

Bruno

From: Bruno Amara
Sent: Tuesday, May 30, 2017 6:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Ron

see attached with markups. I will send clean versions as well.

Thanks
Bruno

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 4:41 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

<1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v7_Markup.doc>

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ~~["including"?]~~ under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. ~~The $2 billion request from IESO is based on current data and assumptions which could change.~~
- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, ~~[~~to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- ~~For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.~~

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $~~x~~2 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's review and consideration is a submission for ~~approval and signature is~~ an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's proposed *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset. 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 would be used by the IESO to fund the current Global Adjustment shortfall.

~~However, t~~There is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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.

../2

As a result, IESO requires short-term financing to be in place for initial and potential 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 ~~make~~provide the IESO its requested credit facility~~loan to the IESO~~, a direction from the Minister of Finance to the OFA under CIPA will also be required.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered at LRC on June 27, 2017 together with proposed Ministry of Energy submission for regulations related to the proposed *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Attachment

c. Ronald Kwan, ADM, ~~Ontario Financing Authority~~Corporate and Electricity Finance Division
John Kim, Director, Electricity Finance Branch, Ontario Financing Authority

Formatted: Indent: Left: 0", Hanging: 0.38"

From: Ronald Kwan
To: Gadi Mayman
Cc: Anna Strathy
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Wednesday, May 31, 2017 7:00:27 AM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v8_Markup.doc

---

Thanks Gadi.

A few other edits too.

Ron

From: Gadi Mayman
Sent: May-30-17 11:46 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

Looks good. There's still an x instead of 2 at the bottom of page 4 in s.4.

Gadi

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:11 PM
To: Gadi Mayman
Cc: Anna Strathy
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan

Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and

Gadi's sign off today in order to get this to DMO to make sure this will be on June 27 LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ~~["including"?]~~ under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. ~~The $2 billion request from IESO is based on current data and assumptions which could change.~~
- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, ~~[~~to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- ~~For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.~~

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $~~x~~2 billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From: Ronald Kwan
To: Nancy Kennedy (MOHLTC)
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 11:16:39 PM

Hi Nancy,

Not the draft, as of yet. They are aware of the requirement and ask by IESO (and included in the TB report back TB assessment note and noted in the TB Minute in early May), but it would be an MOF submission, as under CIPA and the OFA.

Scott took a look at the draft. He said it looked fine, on a skim.

We can share the draft as is, if you're okay with it.

Ron

-----Original Message-----
From: Kennedy, Nancy (MOF) [mailto:Nancy.Kennedy@ontario.ca]
Sent: May-30-17 10:26 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

Thanks Ron.

Has this all gone through ENE?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:13 PM
To: Kennedy, Nancy (MOF)
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

FYI on the OIC to enable the OFA credit facility requested by IESO.

Ron

From: Ronald Kwan
Sent: May-30-17 10:11 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman

Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package

once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package<file:///\\ofina.on.ca\ofadfs\Users\CEF\Hydro%202017\IESO\Financing\IESO-OFA%20-%20FHP%20Line%20of%20Credit\LRC%20Draft%20Package>

Thanks,
Gavin He

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Gadi Mayman
Cc: Anna Strathy
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 10:11:20 PM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v8.doc

---

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator ("IESO"). This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

- It is proposed that the OIC authorization be $2.0 billion [to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Ronald Kwan
To:	Bruno Amara
Cc:	John Kim; Shajee Kathirgamanathan; Salman Qadir; Gavin He
Subject:	RE: OIC s22 CIPA - OFA-IESO - LRC package
Date:	Tuesday, May 30, 2017 8:02:28 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v7_Markup.doc

Thanks Bruno, et al.

I accepted most of the edits (and reversed one).

If you are okay with it, it could be sent as a draft to the DMO.

Ron

From: Bruno Amara
Sent: May-30-17 6:18 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron

Sorry, as I was looking at clean versions I noticed a couple of other needed edits. E.g. making end date 2047 consistent across documents. Please see attached. I went out on a limb and updated the French translation in 4- CIPA OIC, but will alert legal tomorrow morning to check everything. I'll hold off on clean versions for now pending a read through.

Bruno

From: Bruno Amara
Sent: Tuesday, May 30, 2017 6:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Ron

see attached with markups. I will send clean versions as well.

Thanks

Bruno

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 4:41 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31~~June 30~~, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator ("IESO"). This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Commented [SQ21]: Because we are picking a precise date, does this date work (30 year). Assumes plan is implemented July 1, 2017

Commented [RK2R1]: Could be shorter, as the recovery period should be starting well before then. Let's square-bracket for now.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

- It is proposed that the OIC authorization be $2.0 billion [to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim; Shajee Kathirgamanathan; Salman Qadir; Gavin He
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 6:18:19 PM
Attachments: 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE_Markup.docx
1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v7.doc

---

Hi Ron

Sorry, as I was looking at clean versions I noticed a couple of other needed edits. E.g. making end date 2047 consistent across documents. Please see attached. I went out on a limb and updated the French translation in 4- CIPA OIC, but will alert legal tomorrow morning to check everything. I'll hold off on clean versions for now pending a read through.

Bruno

From: Bruno Amara
Sent: Tuesday, May 30, 2017 6:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Ron

see attached with markups. I will send clean versions as well.

Thanks
Bruno

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 4:41 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two ~~hree~~ Billion ~~Five Hundred Million~~ Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two ~~hree~~ Billion ~~Five Hundred Million~~ Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by June 30, 2047~~53~~;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux~~trois~~ milliards ~~cinq cent millions~~ de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux ~~trois~~ milliards ~~cinq cent millions~~ de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 30 juin 2047~~53~~;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0~~3.5~~ billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and June 30, 204~~753~~.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA of up to $x, under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.~~...~~

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator (~~to the~~ ("IESO"). This ~~and~~ will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available ~~as it will be required~~ to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Commented [SQ21]: Because we are picking a precise date, does this date work (30 year). Assumes plan is implemented July 1, 2017

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [SQ22]: We will need this number from Documentation as there are numerous OICs, including a large one ($6 billion+ for school boards)

Commented [RK3]: Include IESO in the list.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility~~will be lending~~ to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability~~.~~ to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 ~~T~~the proposed legislation, ~~however, does not require the~~ 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. ~~This short-term financing may also be required before the OPG SPV is operating and before it has its own financing in place to purchase the regulatory asset.~~

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan*

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Act, 2017. The $2 billion request from IESO is based on current data and assumptions which could change.

- ~~, therefore, i~~It is proposed that the OIC authorization be $~~3.5~~2.0 billion ~~[~~to ensure that there is sufficient ~~contingency~~borrowing authority in place for the OFA to meet the IESO ~~and other requirements once the implementation begins]~~'s.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, t~~T~~he Minister of Finance will subsequently ~~be required to~~ provide a Directive to the OFA to direct it to provide credit facilities ~~make loans~~ to the IESO in an amount not to exceed $~~3~~2.5 billion.
  - The OFA currently provides a credit facility to the IESO of $975 million.
  - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Commented [RK4]: $2bn, unless there is an identifiable other reason OFA needs more borrowing authority.

Commented [RK5]: Add in only if this is justifiable.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017*, which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation~~ing~~ of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed ~~R~~regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval~~ed~~ concurrently as it ~~is~~supports a crucial component of the successfully implementation~~ing~~ of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how ~~the OFA~~it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim; Shajee Kathirgamanathan; Salman Qadir; Gavin He
Subject:	RE: OIC s22 CIPA - OFA-IESO - LRC package
Date:	Tuesday, May 30, 2017 6:00:54 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v7.doc 2 - CIPA - OIC s22 - OFA_FHP - LRC_Memo CEO to DM v4.doc 3 - CIPA - OIC s22 - OFA_FHP - LRC_Memo DM to Minister v4.doc 4 - CIPA OIC s.22 May 2017 (v.3) - ENG and FRE_Markup.docx

---

Ron

see attached with markups. I will send clean versions as well.

Thanks
Bruno

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 4:41 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and

Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0~~3.5~~ billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and June 30, 204~~753~~.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA of up to $x, under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.~~...~~

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator (~~to the~~ ("IESO"). This ~~and~~ will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available ~~as it will be required~~ to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Commented [SQ21]: Because we are picking a precise date, does this date work (30 year). Assumes plan is implemented July 1, 2017

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [SQ22]: We will need this number from Documentation as there are numerous OICs, including a large one ($6 billion+ for school boards)

Commented [RK3]: Include IESO in the list.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility~~will be lending~~ to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability~~.~~ to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 ~~T~~the proposed legislation, ~~however, does not require the~~ 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. ~~This short-term financing may also be required before the OPG SPV is operating and before it has its own financing in place to purchase the regulatory asset.~~

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan*

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Act, 2017. The $2 billion request from IESO is based on current data and assumptions which could change.

- ~~, therefore, i~~It is proposed that the OIC authorization be $~~3.5~~2.0 billion ~~[~~to ensure that there is sufficient ~~contingency~~borrowing authority in place for the OFA to meet the IESO ~~and other requirements once the implementation begins]~~'s.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, t~~T~~he Minister of Finance will subsequently ~~be required to~~ provide a Directive to the OFA to direct it to provide credit facilities ~~make loans~~ to the IESO in an amount not to exceed $~~3~~2.5 billion.
  - The OFA currently provides a credit facility to the IESO of $975 million.
  - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Commented [RK4]: $2bn, unless there is an identifiable other reason OFA needs more borrowing authority.

Commented [RK5]: Add in only if this is justifiable.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017*, which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation~~ing~~ of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed ~~R~~regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval~~ed~~ concurrently as it ~~is~~supports a crucial component of the successfully implementation~~ing~~ of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how ~~the OFA~~it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for the Minister's approval and signature is an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's proposed *Ontario Fair Hydro Plan Act, 2017*, subject to the approval of the Legislature.

Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset. 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 would be used by the IESO to fund the current Global Adjustment shortfall.

However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may be timing differences between the IESO's monthly

Formatted: Left, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tab stops: 2.25", Left + Not at 1.16" + 2.6" + 4.1" + 5.1" + 5.5" + 6" + 6.5"

Formatted: No bullets or numbering

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: List Paragraph, Left, Space After: 8 pt, Line spacing: Multiple 1.08 li, Tab stops: Not at 1.16" + 2.6" + 4.1" + 5.1" + 5.5" + 6" + 6.5"

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.

../2

Scott Thompson
Page 2

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

~~../2~~
~~Scott Thompson~~
~~Page 2~~

The OFA obtains the funding it needs to carry out its lending program by borrowing from the Province. This proposed OIC authorizes the Minister of Finance to lend up to Canadian $2.0~~3.5~~ billion to the OFA. In addition, in order for the OFA to make the loan to the IESO, a direction from the Minister of Finance under CIPA will also be required.

Attached for your signature is a memorandum from you to the Minister requesting that the Minister recommend the OIC. This OIC is on track to be considered on June 27, 2017 together with proposed submission related to the proposed *Ontario Fair Hydro Plan Act, 2017.*

Staff are available to address any questions you may have regarding this matter.

Gadi Mayman

Formatted: Font: Font color: Black, English (Canada)

Formatted: Right

Formatted: Justified, Tab stops: Not at 0"

Attachment

c. Ronald Kwan, ADM, Ontario Financing Authority
John Kim, Director, Electricity Finance Branch, Ontario Financing Authority

Ministry of Finance
Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances
Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595

Ontario

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister of Finance

SUBJECT: **Approval of an Order in Council under section 22 of the *Capital Investment Plan Act***

Attached for your approval and signature is an Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act* ("CIPA") for the purpose of authorizing the Minister of Finance to make loan(s) to the Ontario Financing Authority ("OFA"). The proceeds from these loans would allow the OFA to lend to the Independent Electricity Systems Operator ("IESO") in connection with the implementation of the Province's proposed *Ontario Fair Hydro Plan Act, 2017.*

Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset. 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 would be used by the IESO to fund the current Global Adjustment shortfall.

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0"

However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset~~The proposed legislation, however, does not require the OPG SPV to purchase any portion of the regulatory asset. As a result, IESO requires short-term financing to be in place in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.~~

~~../2~~

~~The Honourable Charles Sousa~~
~~Page 2~~

The OFA obtains the funding it needs to carry out its lending program by borrowing from the Province. This proposed OIC authorizes the Minister of Finance to lend up to Canadian $2.0~~3.5~~ billion to the OFA. In addition, in order for the OFA to make the loan to the IESO, a direction from the Minister of Finance under CIPA will also be required.

Staff of the Ontario Financing Authority are available to address any questions you may have regarding this matter.

Scott Thompson

Attachment

c. Gadi Mayman, CEO, Ontario Financing Authority
Ronald Kwan, ADM, Ontario Financing Authority

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Two ~~hree~~ Billion ~~Five Hundred Million~~ Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Two ~~hree~~ Billion ~~Five Hundred Million~~ Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by June 30, 2053;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de deux~~trois~~ milliards ~~cinq cent millions~~ de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de deux ~~trois~~ milliards ~~cinq cent millions~~ de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 30 juin 2053;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Ronald Kwan
To: Gadi Mayman
Cc: Anna Strathy
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 5:29:16 PM

Thanks Gadi.

Works for me too, and staff are redrafting to reflect that.

Ron

From: Gadi Mayman
Sent: May-30-17 17:20
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

From:	Ronald Kwan
To:	Gavin He
Cc:	John Kim; Bruno Amara; Shajee Kathirgamanathan; Salman Qadir
Subject:	RE: OIC s22 CIPA - OFA-IESO - LRC package
Date:	Tuesday, May 30, 2017 4:40:36 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v6_Markup_RK.doc 4 - CIPA OIC s.22 May 2017 (v.2) - ENG and FRE_Markup.docx

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $3.5 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and June 30, 2053.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA of up to $x, under which the OFA has provided loans and credit facilities to …

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator (~~to the~~ ("IESO"). This ~~and~~ will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available ~~as it will be required~~ to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

Commented [RK1]: Why this amount? Unless we can provide a reason beyond the FHP, I'd rather not go so high.

Commented [RK2]: Why this date? Tied to what?

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [RK3]: Include IESO in the list.

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility~~will be lending~~ to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO ~~to sell~~ the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability~~.~~ to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 ~~T~~the proposed legislation, ~~however, does not require the~~ 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. ~~This short-term financing may also be required before the OPG SPV is operating and before it has its own financing in place to purchase the regulatory asset.~~

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

- ~~, therefore, i~~It is proposed that the OIC authorization be $3.5 billion [to ensure that there is sufficient ~~contingency~~borrowing authority in place for the OFA to meet the IESO and other requirements ~~once the implementation begins~~].

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, t~~T~~he Minister of Finance will subsequently ~~be required to~~ provide a Directive to the OFA to direct it to provide credit facilities ~~make loans~~ to the IESO in an amount not to exceed $~~3~~2.5 billion.
  - The OFA currently provides a credit facility to the IESO of $975 million.
  - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

Commented [RK4]: $2bn, unless there is an identifiable other reason OFA needs more borrowing authority.

Commented [RK5]: Add in only if this is justifiable.

Formatted: Font: 11 pt, Font color: Auto, English (United States)

Formatted: Indent: Left: 0.5", Tab stops: 0.75", List tab + Not at 1"

Formatted: Font: 11 pt, Font color: Auto, English (United States)

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017*, which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation~~ing~~ of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed ~~R~~regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval~~ed~~ concurrently as it ~~is~~supports a crucial component of the successfully implementation~~ing~~ of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.

- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how ~~the OFA~~it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

Document Version/Version du document: document: MOF.2017.OFA[EFB]v.2

Authority Verified/Compétence vérifiée: _____

Please print name/Nom en lettres moulées s.v.p.: _____

Telephone/Téléphone: _____

Recommended by the Treasury Board/Management Board of Cabinet on:
Recommandé par le Conseil du Trésor / Conseil de gestion du gouvernement le: _____

Secretary/Secrétaire: _____

Executive Council of Ontario/Conseil exécutif de l'Ontario **[Bilingual]**

[Bilingue]

Ontario

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

WHEREAS pursuant to subsection 22(1) of the *Capital Investment Plan Act, 1993* (the "Act"), the Minister of Finance may purchase securities of or make loans to corporations established under subsection 2(1) of the Act in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient;

AND WHEREAS the Ontario Financing Authority (the "OFA") is a corporation established under subsection 2(1) of the Act;

AND WHEREAS pursuant to subsection 6(3) of the Act, the power of a corporation established under subsection 2(1) of the Act to borrow and issue securities, among other things, may only be exercised under the authority of a by-law that has been approved by the Minister of Finance;

AND WHEREAS the OFA wishes to borrow up to Three Billion Five Hundred Million Dollars in lawful money of Canada from the Minister of Finance and has been authorized to do so by a borrowing by-law approved in accordance with the Act;

Commented [RK1]: Why this amount? Unless we can provide a reason beyond the FHP, I'd rather not go so high.

THEREFORE:

Pursuant to subsection 22 (1) of the Act, the Minister of Finance is authorized to lend a maximum of Three Billion Five Hundred Million Dollars in lawful money of Canada to the OFA on the following terms and conditions:

(a) the loan may be advanced in such amounts and at such time or times as required by the OFA;

(b) repayment of advances made under the loan plus accrued interest may be made in whole or in part at any time provided that the loan plus any accrued interest shall be fully repaid by June 30, 2053;

(c) each advance (an “Advance”) made under the loan hereby authorized shall bear interest at a rate which is determined as follows:

(i) from the date of the Advance to (but excluding) the date of repayment the Advance shall bear interest at a per annum rate equivalent to the yield earned on ninety day Province of Ontario treasury bills on the date before the Advance Date as determined by the Province, provided that if an Advance is outstanding for longer than ninety days, the interest rate shall be reset on the last day of each ninety day period (the “Reset Date”) to the yield earned on ninety day Province of Ontario treasury bills immediately preceding the Reset Date for such ninety day period as determined by the Province;

(ii) in the event that moneys included in an Advance are used by the OFA for the purpose of funding loans to third parties (a “Third Party Loan”), the rate of interest payable by the OFA to the Province on the portion of the Advance so used shall be adjusted effective as of the date that the portion of the Advance is used to fund the Third Party Loan so that the per annum rate of interest payable by the OFA on such moneys is equivalent to the per annum rate of interest payable to the OFA under the Third Party Loan less an amount as may be determined by the Minister of Finance in respect of such Third Party Loan or a class of such Third Party Loans, until but excluding the date on which the Third Party Loan is repaid, at which time the interest rate set out in subparagraph (i) shall again be applicable to that portion of the Advance; and

(iii) in the event that moneys described in subparagraph (ii), once repaid, are subsequently used to fund loans to third parties, subparagraph (ii) shall again be applicable in determining the interest rate payable to the Province on that portion of the Advance used to fund such loan, and so on, until the Advance shall be repaid to the Province in full;

(iv) despite subparagraphs (ii) and (iii), in the event that no interest is payable to the OFA under a Third Party Loan, no interest shall be payable by the OFA on the portion of the Advance so used and to the extent that the terms of a Third Party Loan provide for the deferral of the payment of accrued interest for a period, the interest payment terms of an Advance or portion thereof shall also be deferred for a similar period.

(d) interest for any period of less than one year shall be payable for the actual number of days included in such period, computed on the basis of a 365-day year;

(e) despite paragraph (b) of this Order, interest on any portion of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall accrue on the basis stated above but shall become payable only to the extent the OFA receives payment of interest under the relevant Third Party Loan;

(f) despite paragraph (b) of this Order, any portion of the principal of an Advance made to the OFA under the loan that is used by the OFA to fund a Third Party Loan shall become payable only to the extent the OFA receives repayment of principal under the relevant Third Party Loan; and

(g) the loan hereby authorized shall be evidenced by a promissory note.

ATTENDU QUE le ministre des Finances peut, en vertu du paragraphe 22 (1) de la *Loi de 1993 sur le plan d'investissement* (la « Loi »), acheter des valeurs mobilières des personnes morales créées en vertu du paragraphe 2 (1) de la Loi ou leur consentir des prêts selon les montants, aux moments et aux conditions que le lieutenant-gouverneur en conseil estime opportuns;

ATTENDU QUE l'Office ontarien de financement (l'« OOF ») est une personne morale créée en vertu du paragraphe 2 (1) de la Loi;

ATTENDU QUE, conformément au paragraphe 6 (3) de la Loi, le pouvoir qu'ont les personnes morales créées en vertu du paragraphe 2 (1) de la Loi de contracter des emprunts et d'émettre des valeurs mobilières, entre autres, ne peut être exercé qu'aux termes d'un règlement administratif approuvé par le ministre des Finances;

ATTENDU QUE l'OOF souhaite emprunter jusqu'à concurrence de trois milliards cinq cent millions de dollars en monnaie légale du Canada du ministre des Finances et qu'il a été autorisé à le faire par un règlement administratif d'emprunt approuvé conformément à la Loi;

PAR CONSÉQUENT :

en vertu du paragraphe 22 (1) de la Loi, le ministre des Finances est autorisé à prêter un montant maximal de trois milliards cinq cent millions de dollars en monnaie légale du Canada à l'OOF, aux conditions suivantes :

a) le prêt peut être consenti selon les montants et aux moments qui conviennent à l'OOF;

b) le remboursement des avances consenties au titre du prêt, plus les intérêts courus, peut à tout moment être effectué en totalité ou en partie, pourvu que le prêt et les intérêts courus soient entièrement remboursés au plus tard le 30 juin 2053;

c) chaque avance (« avance ») faite au titre du prêt autorisé par les présentes portera intérêt au taux est fixé comme suit :

(i) de la date où elle a été faite jusqu'à la date (non comprise) de son remboursement, l'avance portera intérêt à un taux annuel équivalant au rendement gagné sur des bons du Trésor de la province de l'Ontario de quatre-vingt-dix jours à la date précédant la date de l'avance fixée par la province, pourvu que ce taux d'intérêt soit rajusté le dernier jour de chaque période de quatre-vingt-dix jours (« date de rajustement ») selon le rendement gagné sur de tels bons du Trésor immédiatement avant la date de rajustement pour une période de quatre-vingt-dix jours décidée par la province, si l'avance est impayée pendant plus de quatre-vingt-dix jours;

(ii) dans l'éventualité où l'OOF se servirait de sommes comprises dans une avance pour financer des prêts à des tiers, le taux d'intérêt à payer par l'OOF à la province sur la partie de l'avance ainsi utilisée sera rajusté à la date à laquelle la partie de l'avance sera utilisée pour le financement du prêt à un tiers de façon que le taux d'intérêt annuel à payer par l'OOF sur de telles sommes soit équivalent à ce

dernier taux moins un montant que pourra fixer le ministre des Finances à l'égard d'un tel prêt ou d'une telle catégorie de prêt, jusqu'à la date (non comprise) à laquelle le prêt à un tiers sera remboursé, date à laquelle le taux d'intérêt établi au sous-alinéa (i) s'appliquera de nouveau à cette partie de l'avance;

(iii) dans l'éventualité où les sommes décrites au sous-alinéa (ii), une fois remboursées, seraient ultérieurement utilisées pour le financement de prêts à des tiers, le sous-alinéa (ii) s'appliquera de nouveau dans l'établissement du taux d'intérêt à payer à la province sur la partie de l'avance utilisée à cette fin, et ainsi de suite, jusqu'à ce que l'avance ait été remboursée intégralement à la province;

(iv) malgré les sous-alinéas (ii) et (iii), dans l'éventualité où aucun intérêt ne serait payable à l'OOF au titre d'un prêt à un tiers, aucun intérêt ne sera à payer par l'OOF sur la partie de l'avance ainsi utilisée et dans la mesure où les conditions du prêt à un tiers prévoient le report du paiement d'intérêts courus pour une période, le paiement d'intérêts au titre d'une avance ou d'une partie d'une avance sera également reporté pour une période d'égale durée;

d) l'intérêt payable relativement à toute période de moins d'un an sera calculé en fonction du nombre de jours réellement compris dans cette période, par rapport à une année comptant 365 jours;

e) par dérogation à l'alinéa a) ci-dessus, l'intérêt sur toute partie d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers est calculé comme il est indiqué ci-dessus, mais cet intérêt devient payable uniquement dans la mesure où l'OOF reçoit un paiement d'intérêts au titre du prêt à un tiers;

f) par dérogation à l'alinéa b) ci-dessus, toute partie du capital d'une avance consentie à l'OOF dans le cadre du prêt que cette dernière utilise pour financer un prêt à un tiers devient payable uniquement dans la mesure où l'OOF reçoit un remboursement du capital au titre du prêt à un tiers

g) le prêt autorisé en vertu des présentes sera attesté par un billet à ordre.

_____

Recommended: Minister of Finance
Recommandé par : Le ministre des Finances

_____

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered:
Approuvé et décrété le :

_____

Lieutenant Governor
La lieutenante-gouverneure

From: Ronald Kwan
To: Nancy Kennedy (MOHLTC)
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package
Date: Wednesday, May 31, 2017 9:35:52 AM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v9.doc

---

Hi Nancy,

For sure.

A few copy edits were made subsequently, and the attached was sent for comment. Note that the OIC itself does not mention the FHP, but just would increase the OFA's borrowing room under CIPA.

Ron

-----Original Message-----
From: Kennedy, Nancy (MOF) [mailto:Nancy.Kennedy@ontario.ca]
Sent: May-31-17 06:34
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

I am okay with the draft so go ahead. I think it's good for them to comment early.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 11:16 PM
To: Kennedy, Nancy (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

Not the draft, as of yet. They are aware of the requirement and ask by IESO (and included in the TB report back TB assessment note and noted in the TB Minute in early May), but it would be an MOF submission, as under CIPA and the OFA.

Scott took a look at the draft. He said it looked fine, on a skim.

We can share the draft as is, if you're okay with it.

Ron

-----Original Message-----
From: Kennedy, Nancy (MOF) [mailto:Nancy.Kennedy@ontario.ca]
Sent: May-30-17 10:26 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

Thanks Ron.

Has this all gone through ENE?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:13 PM
To: Kennedy, Nancy (MOF)
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

FYI on the OIC to enable the OFA credit facility requested by IESO.

Ron

From: Ronald Kwan
Sent: May-30-17 10:11 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>

Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package<file:///\\ofina.on.ca\ofadfs\Users\CEF\Hydro%202017\IESO\Financing\IESO-OFA%20-%20FHP%20Line%20of%20Credit\LRC%20Draft%20Package>

Thanks,
Gavin He

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

-
- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Ronald Kwan
To:	Bruno Amara; Gavin He
Cc:	John Kim
Subject:	RE: OIC s22 CIPA - OFA-IESO
Date:	Thursday, June 08, 2017 2:54:00 PM
Attachments:	OICNA-13188_ID49171_LRC_Committee_Note - v2 - June 5 - need fair hydro_Markup.docx

Hi,

A few additional suggestions.

Ron

From: Bruno Amara
Sent: June-08-17 14:18
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Gavin

Some minor suggested edits

Bruno

From: Gavin He
Sent: Thursday, June 08, 2017 1:11 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OIC s22 CIPA - OFA-IESO

Hi John/Bruno,

Please find attached the draft CBN note on our IESO OIC submission for your review and comment.

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 1:04 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Here is the draft note. There are number of placeholders to insert details from the other submission.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:45 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Thanks Jonathan!

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 12:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Checking in with CO on a number of things shortly, I will include this.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:41 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

In addition, do you know if CO is also doing a CBN note for our submission? If so, would they be able to share a draft with us as well?

Thanks,
Gavin He

From: Gavin He
Sent: Wednesday, June 07, 2017 3:27 PM
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

For now, could you please include Ron Kwan and John Kim for the briefing?

Also, do you have an idea when the meeting will be?

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Finance

DRAFT IESO's borrowing requirement for the Fair Hydro Plan

Policy Approval: May 31, 2017 (Fair Hydro Act)	TB/MBC: May (Fair Hydro)	LRC Date: June 27, 2017	Cabinet Date: June 27, 2017	Effective Date:

Summary of Proposal

This proposal does not contain any variances from current government direction.

Context for Decision:

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2.0B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

Formatted: Font: Italic

~~The IESO is responsible for financing short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.~~

The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

Why does Ontario need these changes? Why now?

The proposed OIC is needed to ensure borrowing authority for the OFA is available to provide the IESO necessary resources to implement the *Ontario Fair Hydro Plan Act, 2017*, which was passed on May 31, 2017.

The IESO is anticipated to have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- There is expected to be initial and potential 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.]

The Ministry of Energy (Energy) is expected to propose regulations under the *Ontario Fair Hydro Plan Act, 2017* for Cabinet approval by the end of June 2017. The proposed OIC should be considered for approval concurrently as it supports a crucial component for the successfully implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Formatted: Font: Italic

Formatted: Font: Italic

How will this proposal impact Ontario?

This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

The OFA currently provides a credit facility to the IESO of $975M. The IESO has requested that the existing credit facility be reduced to $475M, and a new credit facility be provided of $2.0B, for a total amount of $2.475B.

[place holder for Fair Hydro cross reference]

What is the expected cost to government?

With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0B to the OFA. Loans advanced will result in increased borrowing in the debt markets by the Province, with associated interest costs. Loans are required under the OIC to bear offsetting interest, and are expected to be repaid and, therefore, no fiscal impact is expected.

What are the key steps to deliver this proposal?

If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

How will the changes be communicated?

MOF is not proposing any communications in relation to the proposed OIC.

[place holder for Fair Hydro?]

Cabinet Office Analysis

Introduction:

Under other OICs, the Minister of Finance is authorized to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

Linkages:

The proposed OIC is required is to ensure the timely implementation and support for the success of the Fair Hydro Plan.

[place holder for Fair Hydro description]

Delivery:

If approved, the Minister of Finance would have authorization to provide a loan to the OFA with a directive on how the loan can be used.

Stakeholder response:

[place holder for Fair Hydro]

Risks:

Not being able to implement Fair Hydro.
[place holder for Fair Hydro]

From:	Bruno Amara
To:	Gavin He
Cc:	Ronald Kwan; John Kim
Subject:	RE: OIC s22 CIPA - OFA-IESO
Date:	Thursday, June 08, 2017 2:18:11 PM
Attachments:	OICNA-13188_ID49171_LRC_Committee_Note - v2 - June 5 - need fair hydro.docx

Gavin

Some minor suggested edits

Bruno

From: Gavin He
Sent: Thursday, June 08, 2017 1:11 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OIC s22 CIPA - OFA-IESO

Hi John/Bruno,

Please find attached the draft CBN note on our IESO OIC submission for your review and comment.

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 1:04 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Here is the draft note. There are number of placeholders to insert details from the other submission.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:45 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Thanks Jonathan!

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 12:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Checking in with CO on a number of things shortly, I will include this.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:41 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

In addition, do you know if CO is also doing a CBN note for our submission? If so, would they be able to share a draft with us as well?

Thanks,
Gavin He

From: Gavin He
Sent: Wednesday, June 07, 2017 3:27 PM
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

For now, could you please include Ron Kwan and John Kim for the briefing?

Also, do you have an idea when the meeting will be?

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Finance

DRAFT IESO's borrowing requirement for the Fair Hydro Plan

Policy Approval: May 31, 2017 (Fair Hydro Act)	TB/MBC: May (Fair Hydro)	LRC Date: June 27, 2017	Cabinet Date: June 27, 2017	Effective Date:

Summary of Proposal

This proposal does not contain any variances from current government direction.

Context for Decision:

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2.0B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

Formatted: Font: Italic

The IESO is responsible for financing short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

Why does Ontario need these changes? Why now?

The proposed OIC is needed to ensure borrowing authority for the OFA is available to provide the IESO necessary resources to implement the *Ontario Fair Hydro Plan Act, 2017*, which was passed on May 31, 2017.

The Ministry of Energy (Energy) is expected to propose regulations under the *Ontario Fair Hydro Plan Act, 2017* for Cabinet approval by the end of June 2017. The proposed OIC should be considered for approval concurrently as it supports a crucial component for the successfully implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Formatted: Font: Italic

Formatted: Font: Italic

How will this proposal impact Ontario?

This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

The OFA currently provides a credit facility to the IESO of $975M. The IESO has requested that the existing credit facility be reduced to $475M, and a new credit facility be provided of $2.0B, for a total amount of $2.475B.

[place holder for Fair Hydro cross reference]

What is the expected cost to government?

With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0B to the OFA. Loans advanced will result in increased borrowing in the debt markets by the Province. Loans are expected to be repaid and, therefore, no fiscal impact is expected.

What are the key steps to deliver this proposal?

If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

How will the changes be communicated?

MOF is not proposing any communications in relation to the proposed OIC.

[place holder for Fair Hydro?]

Cabinet Office Analysis

Introduction:

Under other OICs, the Minister of Finance is authorized to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

Linkages:

The proposed OIC is required is to ensure the timely implementation and support for the success of the Fair Hydro Plan.

[place holder for Fair Hydro description]

Delivery:

If approved, the Minister of Finance would have authorization to provide a loan to the OFA with a directive on how the loan can be used.

Stakeholder response:

[place holder for Fair Hydro]

Risks:

Not being able to implement Fair Hydro.
[place holder for Fair Hydro]

From:	John Kim
To:	Ronald Kwan; Bruno Amara; Gavin He
Subject:	RE: OIC s22 CIPA - OFA-IESO
Date:	Saturday, June 10, 2017 11:01:07 AM
Attachments:	OICNA-13188_ID49171_LRC_Committee_Note - v2 - June 5 - need fair hydro_Markup2.docx

Hi,

Small additional edits and wanted to verify that comment on the offsetting interest.

Thanks,

John

From: Ronald Kwan
Sent: June-08-17 2:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi,

A few additional suggestions.

Ron

From: Bruno Amara
Sent: June-08-17 14:18
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Gavin

Some minor suggested edits

Bruno

From: Gavin He
Sent: Thursday, June 08, 2017 1:11 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OIC s22 CIPA - OFA-IESO

Hi John/Bruno,

Please find attached the draft CBN note on our IESO OIC submission for your review and comment.

Thanks,
Gavin He

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 1:04 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Here is the draft note. There are number of placeholders to insert details from the other submission.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:45 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Thanks Jonathan!

From: Tekle, Jonathan (MOF) [mailto:Jonathan.Tekle@ontario.ca]
Sent: Thursday, June 08, 2017 12:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Checking in with CO on a number of things shortly, I will include this.

From: Gavin He [mailto:Gavin.He@ofina.on.ca]
Sent: June 8, 2017 12:41 PM
To: Tekle, Jonathan (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

In addition, do you know if CO is also doing a CBN note for our submission? If so, would they be able to share a draft with us as well?

Thanks,
Gavin He

From: Gavin He

Sent: Wednesday, June 07, 2017 3:27 PM
To: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO

Hi Jonathan,

For now, could you please include Ron Kwan and John Kim for the briefing?

Also, do you have an idea when the meeting will be?

Thanks,
Gavin He

LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Finance

DRAFT IESO's borrowing requirement for the Fair Hydro Plan

Policy Approval: May 31, 2017 (Fair Hydro Act)	TB/MBC: May (Fair Hydro)	LRC Date: June 27, 2017	Cabinet Date: June 27, 2017	Effective Date:

Summary of Proposal

This proposal does not contain any variances from current government direction.

Context for Decision:

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2.0B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Ontario Fair Hydro Plan Act, 2017*.

~~The IESO is responsible for financing short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.~~

The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

Why does Ontario need these changes? Why now?

The proposed OIC is needed to ensure borrowing authority for the OFA is available to provide the IESO necessary resources to implement the *Ontario Fair Hydro Plan Act, 2017*, which was passed on May 31, 2017.

The IESO is anticipated to have ~~to~~ financing requirements for short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- There is expected to be initial and potential 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.]

The Ministry of Energy (Energy) is expected to propose regulations under the *Ontario Fair Hydro Plan Act, 2017* for Cabinet approval by the end of June 2017. The proposed OIC should be considered for approval concurrently as it supports a crucial component for the successful~~ly~~ implementation of the *Ontario Fair Hydro Plan Act, 2017*.

How will this proposal impact Ontario?

This proposed OIC is required to assist in fulfilling the commitments under the *Ontario Fair Hydro Plan Act, 2017.*

The OFA currently provides a credit facility to the IESO of $975M. The IESO has requested that the existing credit facility be reduced to $475M, and a new credit facility be provided of $2.0B, for a total amount of $2.475B.

[place holder for Fair Hydro cross reference]

What is the expected cost to government?

With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2.0B to the OFA. Loans advanced will result in increased borrowing in the debt markets by the Province, with associated interest costs. Loans to the IESO or other third parties are required under the OIC to bear offsetting interest, and are expected to be repaid and, therefore, no fiscal impact is expected.

What are the key steps to deliver this proposal?

If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister may provide direction to the OFA on how it can use the proceeds of the loan.

How will the changes be communicated?

MOF is not proposing any communications in relation to the proposed OIC.

[place holder for Fair Hydro?]

Cabinet Office Analysis

Introduction:

Under other OICs, the Minister of Finance is authorized to provide loans to the OFA, and in turn the OFA has provided loans and credit facilities to colleges, school boards and other public bodies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

Linkages:

The proposed OIC is required is to ensure the timely implementation and support for the success of the Fair Hydro Plan.

[place holder for Fair Hydro description]

Delivery:

If approved, the Minister of Finance would have authorization to provide a loan to the OFA with a directive on how the loan can be used.

Stakeholder response:

[place holder for Fair Hydro]

Risks:

Not being able to implement Fair Hydro.
[place holder for Fair Hydro]

From: Gavin He
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED
Date: Tuesday, June 27, 2017 1:42:23 PM
Attachments: OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo CEO-DM_v3.doc
OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo DM-Min_v3.doc
Ministry of Energy s28 request - response letter_v2.doc

Hi Ron,

In addition to the BN, we have drafted the attached memos and response letters as part of the approval package. MOF Legal has reviewed and we have incorporated their edits in the attached version.

Please review and let us know if you are good with this. The documents are also saved under below folder:

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Regards,
Gavin He

From: Bruno Amara
Sent: Tuesday, June 27, 2017 9:58 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron

Sorry, here is latest. There was a small change yesterday in indemnity coverage, where OPG also wanted covered director, officers, employees of a financing entity (but not the financing entity itself), if they are also employees of the corporation or its subsidiaries.

There is also still some back and forth this morning between MoF Legal and Energy legal to clarify some things.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 5:55 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He

<Gavin.He@ofina.on.ca>
Subject: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Bruno/Toby,

FYI – attached is the finalized package for the OPG/IESO indemnities s.28. We've sent this up to our DMO (flagging that OPG Agreement is still subject to MOF/OFA confirmation re: revised wording at section 2).

The Memo, CL table, and business case incorporate all comments from OFA.

I'll let you know once this package is signed by our Minister and ready to send over to MOF.

Many thanks again for your ongoing assistance on this.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

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

Ontario

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act* (*FAA*), the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP business activities and corporate mandate. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against the OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnity Agreements.

…2

IESO and OPG have stated that these indemnities are required for their participation in the OFHP Act.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Attached is a briefing note for your consideration. Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Section 28 Approval for Indemnity Agreements in Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act (FAA)*, the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP business activities and corporate mandate. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against the OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnity Agreements.

…2

IESO and OPG have stated that these indemnities are required for their participation in the OFHP Act.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

Ontario

June , 2017

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the *Financial Administration Act* of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval of the Indemnity Agreements for OPG and the IESO in order for them to participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Yours sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

From:	Gavin He
To:	Ronald Kwan
Cc:	Bruno Amara; Salman Qadir
Subject:	RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED
Date:	Tuesday, June 27, 2017 3:36:16 PM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo CEO-DM_v4_Clean.doc OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo DM-Min_v4_Clean.doc Ministry of Energy s28 request - response letter_v3.doc

Hi Ron,

We are good with your edits and attached are the clean copies of the memos and the response letter.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 2:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi,

Some comments and suggestions on the attached.

Ron

From: Gavin He
Sent: June 27, 2017 1:42 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron,

In addition to the BN, we have drafted the attached memos and response letters as part of the approval package. MOF Legal has reviewed and we have incorporated their edits in the attached version.

Please review and let us know if you are good with this. The documents are also saved under below folder:

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Regards,
Gavin He

From: Bruno Amara
Sent: Tuesday, June 27, 2017 9:58 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron

Sorry, here is latest. There was a small change yesterday in indemnity coverage, where OPG also wanted covered director, officers, employees of a financing entity (but not the financing entity itself), if they are also employees of the corporation or its subsidiaries.

There is also still some back and forth this morning between MoF Legal and Energy legal to clarify some things.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 5:55 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Bruno/Toby,

FYI – attached is the finalized package for the OPG/IESO indemnities s.28. We've sent this up to our DMO (flagging that OPG Agreement is still subject to MOF/OFA confirmation re: revised wording at section 2).

The Memo, CL table, and business case incorporate all comments from OFA.

I'll let you know once this package is signed by our Minister and ready to send over to MOF.

Many thanks again for your ongoing assistance on this.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

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

Ontario

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Section 28 Approval for Indemnity Agreements In Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act* (*FAA*), the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Attached is a briefing note for your consideration. Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Section 28 Approval for Indemnity Agreements in Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act (FAA)*, the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

Ontario

June , 2017

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the *Financial Administration Act* of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the *Financial Administration Act,* of the Indemnity Agreements for OPG and the IESO in order to allow them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Yours sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

From:	Strang, James (TBS)
To:	Ronald Kwan
Cc:	John Kim; Felix Fung (MOF); Paul Kaufman (MOHLTC)
Subject:	RE: OPG/IESO Indemnities - Section 28 Approvals
Date:	Tuesday, May 23, 2017 10:26:52 AM
Attachments:	Briefing note - OPG IESO Indemnities v2b.doc

Sorry folks, attached is the latest BN.

From: Strang, James (TBS)
Sent: May 23, 2017 9:58 AM
To: Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca)
Cc: Kim, John (OFA); Fung, Felix (TBS); Kaufman, Paul (TBS)
Subject: OPG/IESO Indemnities - Section 28 Approvals

Hi Ron,

Energy is preparing a s28 FAA approval request related to OPG and IESO requests for indemnities related to their roles in implementing Ontario Fair Hydro Plan.

I've attached a draft note that is based on the draft materials provided in the second email. The third email indicates a further request to broaden coverage of indemnities that Energy is working on.

Since this is related to global adjustment refinancing, including market offerings, the OFA should be providing advice, but not sure exactly who would be providing that advice regarding a s28 request.

I'm also recommending that should there be a decision to provide the indemnities, it be done under Section 22 of the FAA.

James

Indemnities to OPG/IESO – Implementing Proposed Ontario Fair Hydro Act (if passed)

ISSUE

OPG and IESO are specifically asking for indemnities to the IESO, OPG (the entities) and their respective directors, officers and employees in order to allow them to carry out their roles in implementing the Ontario Fair Hydro Plan (OFHP), primarily Global Adjustment refinancing.

The Ministry indicates both OPG and the IESO are anticipated to carry out activities that fall outside the scope of their typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").

Pending – May 18 update from TBS Legal – Energy decision pending on revised ask from OPG/IESO - a significant increase to the scope of the proposed indemnity agreement, so that it would (a) cover OPG's subsidiaries as well and (b) activities that are more generally related to the implementation of the global adjustment (not just activity that is directly related to the implementation of the legislation).

MOF RECOMMENDATION

Based on materials provided by ENERGY, TBS staff are recommending that the Ministry pursue providing the requested indemnities under Section 22(1) of the FAA – that the Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person.

Should there be in the future a payment of an indemnity, it could be made under Section 12 of the FAA – Any amount required to be paid by or on behalf of the Crown by the terms of a guarantee or indemnity given pursuant to this or any other Act may be paid by the Minister of Finance from the Consolidated Revenue Fund.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25% for a typical residential consumer, starting in the summer of 2017. About half a million small businesses and farms are also expected to benefit. Major components include:

- Refinancing the Global Adjustment (GA)
- Electricity Social Programs moving to being funded from voted appropriations

- Extending the Industrial Conservation Initiative
- Improving Sector Efficiency
- Modernizing Ontario's Electricity Market

It was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Refinancing a portion of GA provides significant and immediate rate relief, about 17% in 2017-18, by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

Implementation of OFHP is on-going. On May 9 and 10, 2017, the Ministry brought proposed legislation forward to TB/MBC and LRC, with the bill being introduced in the Legislature on May 11, 2017. In June 2017, the Ministry is bringing forward regulations to further facilitate implementation.

Both IESO and OPG have specifically asked for indemnities in order to allow them to carry out their roles in implementing the ONFHP.

Regarding roles, the Ministry indicates for:

- OPG – GA refinancing would result in a deferred GA amount that OPG is expected to fund from a special purpose entity that OPG creates (i.e. a financing entity) and that associated risks are beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

- IESO – proposed legislation would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the OFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the OFHP, the conveyance of that asset to OPG's financing entity and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. If so, this may come with heightened exposure to liability for the IESO.

FINANCIAL IMPLICATIONS

The Ministry's submission indicates there is a risk that these corporations and key persons may be subject to increased liability specifically due to their roles with the OFHP. This risk arises in part because of the kind of market that OPG, and IESO

indirectly, are to participate in, and the steps that investors could take to protect their investments.

The Ministry indicates the risk to the Province of giving the indemnities is undeterminable at this time (cannot be quantified), but that the exposure will be linked to the OPG special purpose entity's debt offerings" of accumulated deferred Global Adjustment costs.

From the latest TB/MBC submission, in 2017-18 deferred global adjustment is forecasted to be about $2.5B, of which 51% is to be financed directly in capital markets, and $49%, about $1.1B, in an equity injection to OPG from the Province, with additional OPG shares being given to the province as OPG's sole shareholder.

With the planned approach capping electricity rate increases at 2% till 2020, total accumulated debt to be refinanced reaches a peak of $24.2B by 2027, financed by on-going Provincial equity injections and debt offerings into the market with subsequent collection of deferred amounts from ratepayers out to 2047 (See Appendix A). The Ministry indicates tentative timing for debt offerings to commence is Fall 2017.

Liabilities due to roles with the OFHP

In addition to the IESO and OPG roles outlined under Background, the nature of the indemnities, providing protection due to risk of increased liability specifically due to their roles with the OFHP, suggests that it could possible that if OPG and IESO suffered a loss because of, for example, higher borrowing costs elsewhere that could be shown to be attributable to the OFHP activities, those costs could be within the scope of the proposed indemnities.

Voted Appropriations

Although the Ministry indicates the risk associated with providing the indemnities are undeterminable, the amount of accumulated debt is quite significant. This raises a question about whether the Ministry has sufficient, if any, appropriations in place for 2017-18 to enter into the agreement to provide the indemnities.

- Sections 11.3(1) of the FAA indicates no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation.

- Section 11.2(1) indicates no appropriation shall be charged with an amount that is for a purpose other than that for which the appropriation was provided.

Currently there are no explicit appropriations for GA refinancing other than the $1.1B investment asset for the projected OPG equity injection requirements in 2017-18. There is about $500M in Transfer Payments related for the Electricity Social Programs, that are to be funded from voted appropriations starting in 2017-18 should enabling legislation pass.

Appropriations – Alternate Approach

An alternate approach may be to have, under Section 22.1 of the FAA, the LGIC authorize the Minister of Finance to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person. Should claim be made, a payment of any amount could be made under Section 12 of the FAA, paid by the Minister of Finance from the Consolidated Revenue Fund.

- Section 22. (1) indicates the Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify the debts, obligations, securities or undertakings of any person.

- Section 12 indicates any amount required to be paid by or on behalf of the Crown by the terms of a guarantee or indemnity given pursuant to this or any other Act may be paid by the Minister of Finance from the Consolidated Revenue Fund. .

BUSINESS CASE

Why is the section 28 approval needed?

The Province is being asked to agree to indemnify and hold harmless the IESO and OPG as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the corporation, him or her (respectively) as a result of their direct roles in carrying out activities related to the implementation of the ONFHP.

How has potential Crown liability been limited by the proposed indemnity?

The indemnities would not apply with respect to claims:

- Where coverage is provided under an insurance policy or claims fund to the extent a protected person is covered by a policy or fund.
- Where other indemnities already exist for protected persons.
- Brought about or contributed to by a protected person's dishonesty, gross negligence or willful misconduct
- Arising from circumstances where the corporation, director, officer or employee did not have grounds for believing that their conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty

Measures to mitigate risk with securities:

- The Ministry has been worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

- The proposed legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:
    - OPG issuances of subordinated debt to the SPV/Trust representing up to 49% of total borrowing; and
    - Conditional (springing) guarantees by the Province to provide a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).
- The Ministry indicates OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds.
    - Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.
    - OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.
- The proposed legislation provides for provincial assurances, guarantees and a statutory cause of action.
    - Provincial assurance provision focuses on limiting possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making).
    - Guarantee provisions are intended to backstop the provincial assurance provision and provide that:
        - The Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
        - The Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.
    - Statutory cause of action – pending, check with legal?

What are the possible consequences if section 28 approval is not given?

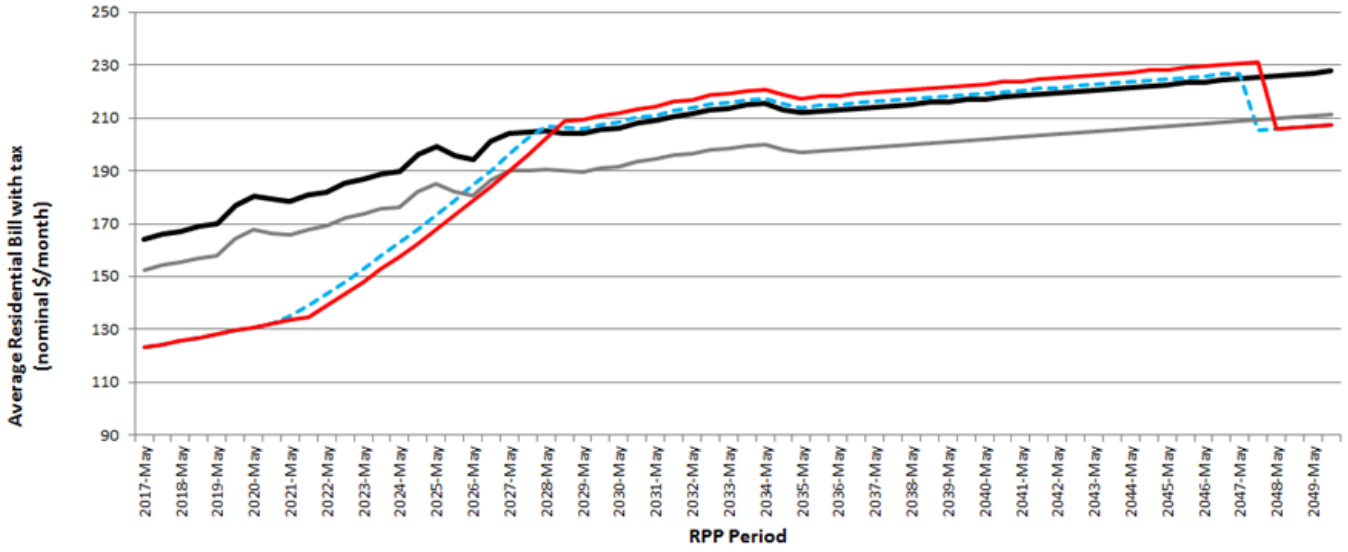
Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP.

If the indemnities are not provided, this could impact OPG and IESO directors' willingness to undertake activities that would fall outside of the scope of typical business

activities and mandate, due to the risk of liability, and consequently jeopardizing the successful implementation of the planned approach to GA refinancing component of the ONFHP. This could result in the planned approach to GA refinancing having to be funded from voted appropriations.

James Strang
General Government, Planning and Resources / PEMD
May 19, 2017

Appendix A: GA Smooting for RPP – Eligible Only (From May 9 TB/MBC Briefing Note & LRC package May 10, 2017)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

Appendix B – Commentary from the Ministry's May 9, 2017 TB/MBC Submission

OPG Financing / OPG Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The proposed legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.
- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;
- Funds from the Province would flow from the Ontario Financing Authority (OFA); and
- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.
- It is anticipated that the initial equity injection would take place as early as June 2017.

Through PRRT, the Ministry of Energy received approval for the creation of an operating asset "OPG Share Purchase" and expenditure increase of $1.1billion in 2017-18 within Vote 2905-5, which is based on the latest estimates by IESO, and provides flexibility to account for forecasting uncertainty. This approval is pending passage of the proposed legislation.

OPG will provide a two year forecast of its equity requirements to the Ministry on annual basis, as part of OPG's business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy's concurrence process.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.
- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

IESO's Credit Facilities

IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current "line of credit" with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO's contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

From: Strang, James (TBS)
To: Ronald Kwan
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals
Date: Wednesday, May 24, 2017 2:37:12 PM
Attachments: 1 OFHP TB sub - 20170418_May7__clean.docx

May 9, 2017 TB Submission attached. I don't believe so, it seemed to focus on backstopping securities.

See pages 19 & 25 related to indemnities.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: May 24, 2017 1:54 PM
To: Strang, James (TBS)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi James,

I had not heard that as a decision. We'll follow up.

Also, was the issue of this type of indemnity in Energy's TB Report Back submission from earlier this month? Would you be able to send us a copy of the submission.

Thanks,
Ron

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: May-24-17 11:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

Hi Ron, we've heard that MOF/OFA will be leading the s28 request.

James

From: Arbabzadeh, Nina (TBS)
Sent: May 24, 2017 11:08 AM
To: Fung, Felix (TBS); Strang, James (TBS)
Subject: FW: OPG/IESO Indemnities - Section 28 Approvals

OFA/MOF to lead! Sorry for the delay in getting back to you.

From: Nelson, Dane (TBS)
Sent: May 24, 2017 10:50 AM
To: Arbabzadeh, Nina (TBS)
Cc: Laughton, Patrick (TBS); Simone, Nicole (TBS)

Subject: RE: OPG/IESO Indemnities - Section 28 Approvals

Hi Nina,

I just spoke to Helen and she agrees that MOF/OFA should lead this Sec 28 while TBS can provide support accordingly.

Regards,

Dane Nelson, Senior Policy Advisor
Treasury Board Secretariat | Deputy Minister's Office
Phone: 416-325-3617 | Mobile: 416-409-3437 | E-mail: Dane.Nelson@ontario.ca

---

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

ONTARIO'S FAIR HYDRO PLAN – REPORT BACK

May 9, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

1. The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

    i. Implementation of Global Adjustment (GA) Refinancing;

    ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

    iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Note: The Independent Electricity System Operator (IESO) is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current lines of credit with the OFA and OEFC.

2.0 PURPOSE OF REQUEST

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25 per cent for a typical residential consumer, starting in the summer of 2017. Up to half a million small businesses and farms are also expected to benefit. Any rate increases for residential consumers over four years would be held to the rate of inflation. Note: These measures include the 8 per cent rebate introduced in January 2017 and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

CONFIDENTIAL

As part of the OFHP approval process, TB/MBC requested that the Ministry "report back" before legislation to enable OFHP was introduced on the following items:

1) GA Refinancing;

2) Social Programs; and

3) ICI Expansion.

In addition to the report back, the Ministry is also requesting the creation of a new transfer payment line, "Price Mitigation Support Initiatives" in Vote 2905-01. The purpose for this is to provide the Ministry an appropriate transfer payment line to support future activities and initiatives around electricity price mitigation for Ontarians.

There is no fiscal impact associated with this request. All new funding placed into the transfer payment lines will be offset by services dollars previously approved within the Ministry's multi-year allocation.

In February 2017, the Ministry reported back to TB/MBC on the details related to the establishment of the new Affordability Fund announced in the OFHP. In April 2017, the Affordability Fund Trust was established. It is expected that electricity distributors will be able to begin applying to the Affordability Fund Trust in Summer 2017.

The Ministry has developed proposed legislation to implement key components of OFHP by summer 2017, and address financing, accounting and legal issues raised in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations to enable implementation of OFHP.

1. GA Refinancing:

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

<u>Proposal</u>

On March 2, 2017, as part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and

future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built. For example, by recognizing that generation assets are expected to continue to provide residual benefit to future ratepayers, beyond the term of current contracts, future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets.

Under this proposal, the electricity bills of current residential consumers would be reduced by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

Implementation

To implement GA refinancing and mitigate financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;

- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);

- Launched a third party research project to assist with implementation of GA refinancing; and

- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

Proposed legislation to enable GA refinancing is planned for a May 2017 introduction.

CONFIDENTIAL

2. Social Programs:

To date, a number of electricity support programs are funded through the electricity rate-base. There is opportunity to provide support to a more targeted subset of customers who are disproportionately affected by increased electricity costs and to shift these costs to the tax base.

These customers include:

- **High Distribution Cost Customers:** Some customers in rural areas where the cost to distribute electricity is high can experience difficulty in reducing their electricity bill through conservation, particularly when reliant on electric heating.
- **Low-Income Customers:** Rising electricity costs make up a disproportionally large amount of the household expenditures for low-income households.
- **First Nation On-Reserve Customers:** On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

The proposed legislative amendments enable the creation or expansion of programs that provide meaningful rate relief to these customers.

Proposal

The Government is proposing to introduce legislation and regulatory changes for the enhanced electricity support programs which will shift costs from the rate base to the tax base, as well as establish the necessary frameworks to deliver these new or enhanced programs.

Rural or Remote Rate Protection

Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

The legislative proposal enables, through regulation, the transfer of the costs of funding the program for Hydro One's R2 customers from the rate-base to the tax-base for prescribed customers.

- R2 customers are those customers of Hydro One classified as living in the lowest density areas of the Province.

CONFIDENTIAL

Distribution Rate Protection

While the RRRP program helps mitigate some of the higher distribution costs for Hydro One R2 customers, as well as certain customers served by Algoma Power, Hydro One Remote Communities and James Bay First Nation LDCs, there is an opportunity to provide further relief to consumers served by higher cost distribution cost LDCs.

Proposed legislation will enable tax-based funding to support distribution rate protection for prescribed residential customers of LDCs with high-cost distribution rates. If passed, the eight high-distribution cost LDCs whose customers are eligible customers will be prescribed in regulation. Residential customers of Algoma Power and Hydro One R2 customers would be eligible for additional relief as these LDCs are the highest cost distributors in the province (as well as six additional higher-distribution cost LDCs).

Proposed legislation enables the establishment of a maximum monthly base distribution charge for those prescribed customers. If the proposed legislation is passed, the mechanism to set this charge will be established in regulation.

On-Reserve First Nations Delivery Credit

On July 12, 2016, the Province and First Nations in Ontario announced an agreement-in-principle for the Province to sell to First Nations for their collective benefit, shares of Hydro One Limited.

The Province would sell up to approximately 15 million shares (2.5 per cent of total current outstanding Hydro One common shares), depending on the level of First Nation participation, to a new collective investment fund owned by First Nations.

As part of discussions on Hydro One shares and rates at COO's All Chiefs Conference and the First Nations-Ontario Energy Table, the Minister of Energy issued a letter directing the OEB to prepare a report providing "advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers". The proposal is premised around the findings in the OEB Report submitted to the Ministry on December 29, 2016.

The program proposal involves the elimination of the delivery charge, or monthly service charge for those customers served by LDCs that do not have a delivery charge, for on-reserve customers prescribed in regulation.

The resulting First Nations Delivery Credit is a reflection of First Nation leadership on this issue and an example of the Political Accord coming to life.

CONFIDENTIAL

Ontario Electricity Support Program (OESP)

The OESP began on January 1, 2016 as a rate-payer funded program to provide relief to low income Ontarians who are struggling to afford their electricity bills. The OEB administers the program.

The Fair Hydro Plan committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

On March 23, 2017, the OEB issued a Decision and Order to end the OESP volumetric charge paid by all Ontario consumers on May 1, 2017 ($0.0011 per kilowatt-hour of power consumed). On April 10, 2017, Cabinet approved amendments to the OESP regulation (O.Reg. 314/15) to increase credit amounts by 50% and introduce new eligibility categories so more Ontarians can access the program. These changes will also come into effect on May 1, 2017.

The amendments to the *Ontario Energy Board Act, 1998* pertaining to OESP will move the program funding from the rate-base and transfer it to the tax-base, and enable alignment of the OESP with social assistance programs delivered by the Ministry of Community and Social Services.

Implementation

Rural or Remote Rate Protection (RRRP)

Appropriated funds shall be used to offset the cost of the RRRP program for electricity consumed on or after July 1, 2017.

The implementation of the amended RRRP program (moving the majority of costs to the tax base) will require oversight of the money appropriated from the legislature by the Ministry of Finance (MOF).

The OEB sets amount that LDCs charge for RRRP to all customers. Once the regulatory mechanism is in place to enable the recovery of the majority of RRRP costs from the tax base, the OEB will significantly reduce the RRRP charge. Change to the funding structure of the program does not require any additional implementation risks or efforts.

CONFIDENTIAL

Distribution Rate Protection

Appropriated funds shall be used to offset the cost of providing distribution rate protection to prescribed residential distribution rate protected consumers based on electricity consumed on or after July 1, 2017.

LDCs and eligible customers would be prescribed in regulation, if the legislation is passed. Additionally, the Ontario Energy Board would be empowered by regulation to determine the rate at which affected LDCs would be harmonized.

The efforts required to implement the program will fall upon the impacted LDCs who will need to adjust their billing systems in order to carry out the program.

On-Reserve First Nation Delivery Credit

A new regulation will need to be passed to set out the program particulars including eligibility for the program.

The LDCs will need to enter into communication plans in order to work with local First Nations Band Councils and to increase awareness of the delivery credit to all eligible consumers.

There are transitional provisions for both the enhanced rate protection and First Nations Delivery Credit that provide distributors with a prescribed time by which they must have adapted their billing systems while maintaining program eligibility for the rate assistance being provided. As part of the regulations, Energy intends to prescribe eligibility as of July 1, 2017. Distributors would be given a three month transitional period to begin delivering the rate assistance by no later than October 1, 2017.

Ontario Electricity Support Program

A legislative amendment to the *Ontario Energy Board Act, 1998* will allow funding to shift from the rate base to the tax base. The amendments will be proclaimed into force at a later date when the OESP charges collected to date (which are being held in an IESO variance account) are depleted. Amendments to the OESP regulation (O.Reg. 314/15) will be needed to implement these legislative changes.

CONFIDENTIAL

3. ICI Expansion:

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, the Industrial Conservation Initiative (ICI) was announced to help large industrial electricity power users better manage their electricity costs while reducing electricity consumption during peak periods.

ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are currently about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Proposal

On March 2, 2017, as part of OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

- As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech from the Throne.

Implementation

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and Demand Management (CDM) programs and/or Ontario Climate Change Solutions Deployment Corporations (OCCSDC) programs and pilots.

CONFIDENTIAL

In addition, the Ministry has retained the Ontario Chambers of Commerce (OCC) and the Canadian Manufacturing and Exporting (CME) to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

3.0 KEY CONTEXT

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which would reduce the electricity bills of residential consumers by 25 per cent on average starting in summer 2017. In addition, increases to electricity bill would be held to the rate of inflation for four years. Up to 500,000 small businesses and farms would also benefit.

OFHP also announced other measures to enhance business competitiveness, helping vulnerable consumers and bend the future cost curve of electricity (see Background for details).

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the OESP to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

The Ministry's report back to TB/MBC focuses on the following OFHP initiatives:

1) GA Refinancing:

As part of OFHP, it was announced that a portion of the GA would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

- Today's electricity consumers have been responsible for the costs of investments in developing the clean, modern and reliable electricity system that Ontario has today and that will continue to provide benefit to future generations. There is an opportunity to recognize the long-term benefit of these generation assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs.

Refinancing a portion of GA provides significant and immediate rate relief by spreading the cost of electricity investments over the expected lifecycle of the infrastructure that has been built.

CONFIDENTIAL

To implement GA refinancing and to mitigate the financing, accounting and legal risks, the Ministry has:

- Worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing (i.e., dealers);

- Developed proposed legislation to respond to the financing, accounting and legal issues outlined in the March 1, 2017 Cabinet Submission. Note: The Ministry is also preparing a number of supporting regulations;

- Sought independent advice regarding financing, accounting and legal requirements from E&Y (OPG), KPMG (IESO), TD Securities (OFA) and Blakes (ENERGY);

- Launched a third party research project to assist with implementation of GA refinancing; and

- Developed comprehensive risk-based costing, including forecast models and sensitivity tests on key assumptions.

Financing, Accounting and Legal Risk Considerations / Mitigations

The Ministry was asked to report back to TBS/MBC with on details on how financing, accounting and legal risks would be mitigated.

Financing

OFHP Legislation

The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in the electricity system are allocated fairly among present and future generations of consumers. Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the (GA), including:

- Fair Allocation Amount: Is a calculation and allocation of clean energy costs over time. It is expected that the calculation would lead to decreased rates in the near term with rates higher than forecast in the long term. The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager

CONFIDENTIAL

(OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister.

- Fair Adjustment: Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018. Under the legislation, the OEB must determine the amount within 15 business days of the legislation coming into force. The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period May 1, 2018 to June 30, 2021.

- Clean Energy Adjustment: Is the mechanism to recover the under-collection of GA from eligible consumers during the recovery period. This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing. IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

The Ministry has prepared legislation and regulations in close collaboration with key ministries (i.e., TB, MOF, AG and CO), agencies (i.e., OEB, IESO, OPG) and third party financial advisors.

- The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recoverable.

- The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year

It is still possible that the full value of the Regulatory Asset may not be purchased. In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

In addition, the Ministry has been worked closely with the Ontario Financing Authority (OFA) and TD Securities (TD), as the Province's external financial advisor, on the financing structure (i.e., legislation, provincial guarantees, OPG's equity injections and IESO's enhanced credit facilities).

In particular, the proposed legislation enables a structure that OFA and TD believe will enable financing at a reasonable cost. Key elements that support this financing structure include:

CONFIDENTIAL

- OPG issuances of subordinated debt to the SPV/Trust representing up to 49% of total borrowing; and

- Conditional (springing) guarantees by the Province to provide a backstop in the event of specific and limited events (e.g., changes to legislation that harm investor interests).

Note: The ability to finance and the cost of financing will only be known with certainty once OPG takes this structure to market.

OPG Financing / OPG Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The proposed legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a “Regulatory Asset”.

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an “Investment Asset”.

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.

CONFIDENTIAL

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province which would be fiscally neutral as OPG would issue new shares to the Province in exchange;

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

- It is anticipated that the initial equity injection would take place as early as June 2017.

Through PRRT, the Ministry of Energy received approval for the creation of an operating asset "OPG Share Purchase" and expenditure increase of $1.1billion in 2017-18 within Vote 2905-5, which is based on the latest estimates by IESO, and provides flexibility to account for forecasting uncertainty. This approval is pending passage of the proposed legislation.

OPG will provide a two year forecast of its equity requirements to the Ministry on annual basis, as part of OPG's business plan process. Note: While included in the business plan, equity requirements will not form part of the Ministry of Energy's concurrence process.

For future funding requirements, the Ministry will seek appropriation through the PRRT process.

OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV / Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

In addition, given the long term nature of this program (i.e., approximately thirty-years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA and interest rates in the medium to long-term.

- Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual

CONFIDENTIAL

ratepayers. Note: The reverse is also true in regards to decreasing demand.

- Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this is a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise. Note: The reverse is also true in regards to interest rates being lower than assumed.

IESO's Credit Facilities

IESO is in discussions with the Ontario Financing Authority (OFA) regarding an increase to its current "line of credit" with the OFA and OEFC (i.e., credit facilities). The increases are in response to IESO role in the delivery of OFHP and to provide a necessary buffer to fund short periods where OPG SPV/Trust does not fund a shortfall.

IESO advises that this is important not only for IESO solvency, but also to maintain its credit rating (i.e., IESO's contracted suppliers' credit arrangements are often based on IESO maintaining a certain rating).

IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period. OPG Trust is not expected to access public capital markets monthly, nor is it required to purchase the regulatory asset. Therefore, IESO will need a credit facility for interim financing. IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

Accounting

The legislation to enable GA refinancing has benefitted from the review and input of IESO/KPMG, OPG/E&Y and OPCD/E&Y.

The proposed legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.

Under the proposed legislation, OEB will issue an "accounting order" to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. This satisfies accounting concerns regarding OEB oversight in the establishment of the Regulatory Asset.

CONFIDENTIAL

IESO will effectively sell the "right to collect" deferred future revenue from ratepayers to OPG in return for cash proceeds.

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement.

To recover its revenue shortfall, IESO will establish a Regulatory Asset that it would sell to OPG's SPV/Trust.

KPMG

The Ministry has worked closely with the Independent Electricity System Operator (IESO) and KPMG on the accounting considerations of GA Refinancing (i.e., legislation, applications of accounting standards/principles, minimizing consolidation risks and ability to establish a regulatory asset).

In particular, the proposed legislation provides a structure that IESO and KMPG believe meets the necessary accounting requirements. Key elements include:

- An IESO variance account created by the proposed legislation that would be recognized as a "regulatory asset".

- An Ontario Power Generation (OPG) special purpose vehicle (SPV) / Trust that would not controlled by IESO and thus have no consolidation risk for IESO.

In addition, KMPG provided some commentary on the accounting requirement for the "derecognition" of the regulatory asset once it's sold to OPG SPV/Trust. KPMG advised that the regulatory asset should be derecognized upon transfer to the OPG SPV/Trust as IESO no longer has rights or obligations to the asset (i.e., the transformation from a regulatory asset to an investment asset).

OPG

The Ministry has worked closely with the Ontario Power Generation (OPG) and E&Y, on the accounting requirements to enable GA Refinancing with respect to consolidation (i.e., legislation, applications of accounting standards/principles, establishing a special purpose vehicle (SPV) / Trust).

The proposed legislation and the associated amendments to the Electricity Act, 1998, enable OPG to create OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust,

CONFIDENTIAL

additional work will be done through the regulations and supporting agreements/documents.

- OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.

- OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Based on the existing and proposed legislation, key operating conditions being addressed in regulations and supporting agreements/documents and no introduction of new conditions that would conflict with OPG's control of the SPV/Trust, E&Y concurs with OPG's assessment that the accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Legal

In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:

- The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

- If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-

CONFIDENTIAL

year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

- By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.

- The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

The bill provides for provincial assurances, guarantees and a statutory cause of action.

The provincial assurance provision is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be

CONFIDENTIAL

imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

The guarantee provisions are intended to backstop the provincial assurance provision and provide that:

- The Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and

- The Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

The Ministry retained Blakes to provide external legal advice in the development of the legislation. The Blakes team provided securitization, constitutional law, energy sector and government expertise. This team was integral to balancing the accounting, legal and finaceability imperatives, as well as differing interests among OPG, IESO, OEB and investment dealers, in crafting the legislation. Blakes will continue to advise through the development of regulations and the commercial agreements that will ensue.

Navigant Analysis

Navigant Consulting has been retained and is conducting research and analysis that would support the implementation of GA refinancing. Specifically, Navigant is conducting analysis that would inform the expected lifecycle of existing generation infrastructure. Navigant is also analyzing the financial benefits that could be achieved by more closely aligning the costs of this infrastructure with the period over which it is expected to provide benefits. In addition, the Ministry has asked for analysis of the social, health and environmental benefits of phasing-out of coal-fired generation in the province and identify which, if any of these benefits are already accounted for in generator contracts.

CONFIDENTIAL

2) Social Programs:

Program Design

Rural or Remote Rate Protection (RRRP)

The legacy RRRP program remains intact with no changes made to the amount of the rate protection or the eligible LDCs. The proposed legislation provides the authority for the government to prescribe classes of customers, customers or LDCs that would be funded through the tax-base rather than the rate-base.

If passed, the government proposes to identify Hydro One R2 customers, as having their RRRP funded through appropriated funds.

Distribution Rate Protection

New Distribution Rate Protection program, to complement the Rural or Remote Electricity Rate Protection (RRRP) program, would be established through proposed legislative amendments under the *Fair Hydro Act, 2017,* and the creation of consequential regulations. Eligible residential customers would have their monthly base distribution charges held to a maximum amount.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

Customers of the following LDCs are eligible for the enhance protection: Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc.

On-Reserve First Nations Delivery Credit

Eligible on-reserve customers will receive a 100% delivery credit or the elimination of their monthly service charge on their electricity bills. The eligibility requirements will be prescribed under regulation.

There are 11 LDCs identified by OEB that provide service to on-reserve customers affected by the program. These include: Algoma, Attawapiskat, Bluewater, Cat Lake, Cornwall, Fort Albany, Kashechewan, Hydro One,

CONFIDENTIAL

Remote Communities, PUC(Sault Ste. Marie), Thunder Bay. In total, about 21,500 customers may be eligible.

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.

OESP credits vary by income level and family size, and there are two credit scales that include:

- The basic program credit ranges from $30/month to $50/month.
- An enhanced credit that ranges from $45/month to $75/month for consumers that are either Indigenous, use electric heat or use certain electrically intensive medical devices.

Ontario's Fair Hydro Plan (OFHP) committed to move the program from the rate base to the tax base, and to expand the OESP by increasing the credit amounts by 50 per cent, making more Ontarians eligible for the program, and aligning the OESP with other social assistance programs to increase uptake.

The proposed legislative changes will address the move to the tax base, and regulatory changes approved by Cabinet on April 10, 2017 will enable the expansion of the OESP effective May 1, 2017. Discussions are ongoing with the OEB and MCSS on aligning OESP delivery with other social assistance programs.

<u>Roles and Responsibilities</u>

Rural or Remote Rate Protection

The roles and responsibilities of the Board remain the same in terms of administering the legacy RRRP program. ENERGY will now be responsible for appropriating the funds from the legislature on an annual basis to cover the costs faced by those consumers or classes of consumers prescribed under regulation (namely Hydro One R2 customers).

Enhanced RRRP or Distribution Rate Protection

The Board would be empowered, by regulation, to set the maximum monthly base distribution charge, based on prescribed criteria.

ENERGY would once again need to appropriate money from the legislature to cover the costs of administering the program.

CONFIDENTIAL

On-Reserve First Nations Delivery Credit

ENERGY would be responsible for appropriating the money from the legislature to cover the costs of administering the credit to on-reserve customers. In addition, ENERGY would need to work with LDCs, Chiefs of Ontario and Band Councils to ensure the program is delivered to all eligible consumers.

Ontario Electricity Support Program

The OEB will continue to the deliver the OESP under the current legislative framework until the variance account is depleted. When legislative changes to shift the program from the rate base to the tax base are proclaimed, the OEB will continue to administer the program, but certain decision making responsibilities and oversights will shift to the Minister of Energy.

MCSS will begin supporting OESP uptake by helping social assistance clients to apply to the OESP. Legislative and regulatory changes will enable this work.

The IESO will continue to manage payments to utilities, unit sub-meter providers, and the OEB in relation to OESP credit delivery and program administration costs. When legislative changes are proclaimed, IESO will begin reporting costs to the Ministry to support forecasting and audit.

3) ICI Expansion:

As part of OFHP, the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors (i.e., with North American Industry Classification Standard (NAICS) codes commencing with the digits "31", "32", "33", and “1114”) in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

In addition, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach.

The rate-base impact of expanding ICI to consumers in the manufacturing and greenhouse sectors is expected to be modest for non-ICI participants. **Note:** The extent of the impact will depend on the uptake in the newly

CONFIDENTIAL

expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting after July 2017.

4.0 BACKGROUND

Decarbonizing and Modernize Ontario's Energy System

Ontario's energy system is being transformed – more than $50 billion has been invested to decarbonize and modernize the electricity system, including an investment of over $35 billion in clean and renewable generation.

Over the last decade the government has invested in Ontario's transmission and distribution infrastructure (i.e., the grid), clean generation and phased out the use of coal-fired generation, which has resulted in electricity prices increasing.

The Ministry of Energy has taken a number of actions to lower electricity costs for all consumers by:

- Deferring investments in generation (e.g., new build nuclear), improving market efficiency (e.g., wind dispatch) and decreasing the cost of renewable procurements (e.g., Green Energy Investment Agreement (GEIA) renegotiation, decreasing Feed-In Tariff (FIT) prices; and

- Increasing cost effectiveness and improving efficiency by adopting new electricity market approaches (e.g., no new NUG contracting and demand response).

Following the 2016 Speech from the Throne, several actions were announced to further reduce electricity costs:

- As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8 per cent.

- Expanded support to eligible rural consumers by updating Rural or Remote Rate Protection (RRRP) with the additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8 per cent rebate.

- Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.

- Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in savings.

CONFIDENTIAL

- Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – average annual savings of $15 million.

Ontario's Fair Hydro Plan

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP). The OFHP includes the following:

- Refinancing the GA over a longer period for Regulated Price Plan (RPP) eligible consumers, including residential consumers and most small businesses and farms.

- Shifting cost recovery for Rural or Remote Rate Protection (RRRP) and Ontario Electricity Support Program (OESP) from electricity bills to the tax base, lowering the regulatory charges paid by ratepayers. Consumers of all sizes would benefit from this change.

- Helping vulnerable electricity consumers by enhancing electricity support programs, including:

  - Broadening RRRP to provide delivery charge relief for the customers of the local distribution companies (LDCs) with the highest delivery charges. We currently support approximately 350,000 Ontarians living in rural or remote areas through RRRP. The enhancement would extend relief to approximately 800,000 households in total.

  - Expanding the OESP, which provides relief directly on the bills of low-income consumers who have applied and meet the eligibility criteria. The expansion would increase OESP credits by 50 per cent and allow more Ontarians to benefit from the program.

  - Establishing a new Affordability Fund, which would provide financial support to lower-income Ontarians who are not eligible for the Home Assistance Program to make home energy efficiency improvements, helping to manage their energy costs.

  - Establishing a Delivery Credit to eliminate delivery charges for all First Nations people living on reserve.

- Expanding the Industrial Conservation Initiative (ICI), which allows large consumers to reduce their electricity bills by up to one-third by reducing their consumption during peak hours. The expansion will allow manufacturers and greenhouses between 500 kW and 1 MW to

CONFIDENTIAL

participate, in addition to the consumers over 1 MW that are already eligible.

- OFHP also committed to reducing system costs by improving sector efficiency and modernizing Ontario's electricity market, working in collaboration with the Independent Electricity System Operator (IESO) and the Ontario Energy Board (OEB).

Legislation to Enable the Refinancing of Global Adjustment

To enable implementation of GA refinancing and mitigate financing, accounting and legal risks, the Ministry has developed proposed legislation (and is working on supporting regulations) that outlines:

- Roles and responsibilities for the OEB, IESO, OPG and the Province;
- A detailed Preamble, Purpose and Definitions;
- Details with respect to Fair Adjustment, Clean Energy Adjustment, Implementation (i.e., Financial Services Manager, Fair Allocation Amount, Financing Plan), Regulatory Asset and Investment Asset;
- Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
- Amendments to other acts (i.e., *Electricity Act* and *Ontario Energy Board)*.

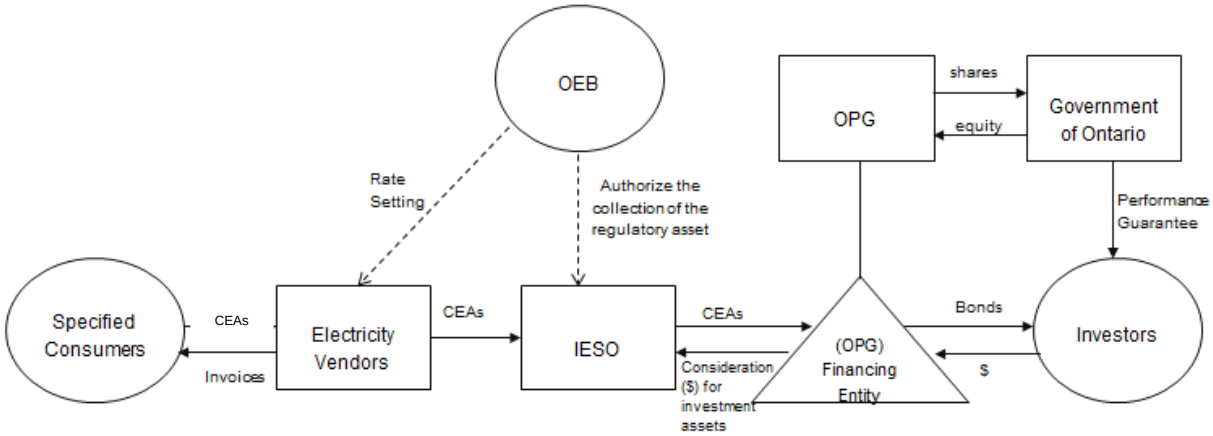
The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment.

The Ministry has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors and third party financing in the development of the proposed legislation.

CONFIDENTIAL

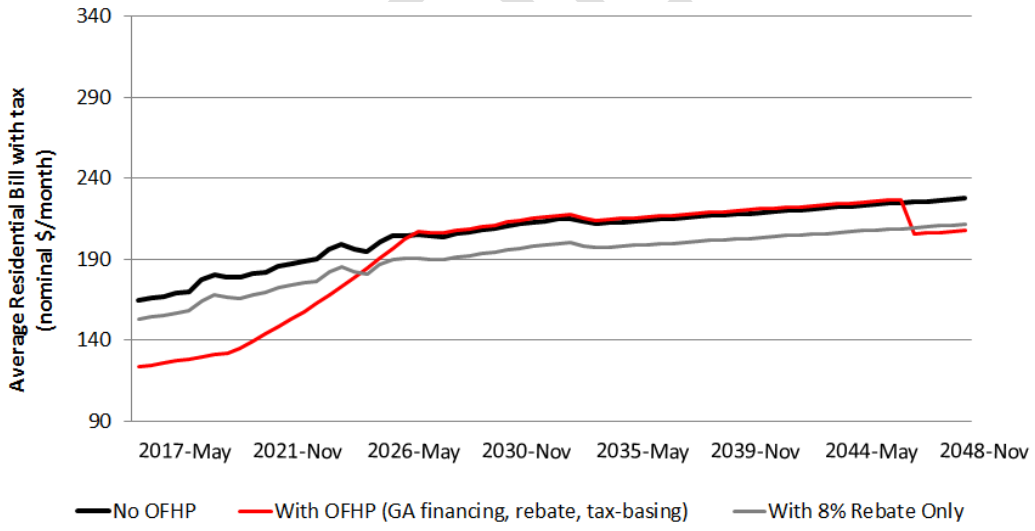
GA Refinancing Implementation Model – Overview

The diagram below outlines how the refinancing of GA would be implemented:



Note: CEAs are “clean energy adjustments”.

Multi-Year Profile of GA Refinancing / Assumptions



The chart above shows the expected multi-year profile under GA Refinancing for each Regulated Price Plan (RPP) period. In the first year, residential bills are projected to be 25 per cent lower as result of the OFHP. In the early years, bills increases are held to the rate of inflation – assumed to be 2% per year in the chart above. From July 1, 2021 onwards, prices increase at a higher rate compared to the first four years on the OFHP.

In the medium to longer term, residential bills exceed what they would have been but for the OFHP. However, in any given year, a typical residential bill under the OFHP cannot exceed what it would have been without OFHP by more than 10 per cent.

OPG's Financing Structure / Equity Financing

The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years. The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

IESO will have a funding gap resulting from the reduction in amounts collected during four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset".

- OEB would determine rates to allow IESO to recover under-collection recorded in its variance account.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust under the Financing Plan.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

- The Investment Asset allows for the recovery of the under-collected GA as the Investment Asset may in turn be sold to other investors or group of investors.

As part of supporting the financing and administration of the GA refinancing mechanism, it is expected that OPG would purchase the right to future cash flows from IESO on an ongoing basis.

These purchases would be financed in part by capital infusions from the Province to OPG for the purposes of stabilizing OPG's capital structure:

- OPG would require monthly "equity injections" from the Province;

- Funds from the Province would flow from the Ontario Financing Authority (OFA); and

CONFIDENTIAL

- The Ministry, OFA and OPG are working through the specific mechanisms, timelines and share features.

Global Adjustment – Overview

The Global Adjustment (GA) accounts for the fixed costs, including capital costs, of running Ontario's generation fleet, as well as the cost of conservation programs. GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

It is via GA that much of the costs of investments in developing a clean, modern and reliable electricity system with a diverse supply mix are recovered.

The vast majority of GA costs now stem from greenhouse gas (GHG) emissions-free renewable and nuclear generation facilities, as well as natural gas plants that were constructed to improve system reliability and replace coal-fired capacity. Generators in Ontario received contracted or regulated rates, which are typically designed to recover capital, financing and fixed operations costs. The GA recovers these fixed costs of running the province's generation fleet, as well as the cost of conservation programs.

The majority of the province's electricity generators are under 20-year contracts and account for under 50% of the GA. Some of these generators will continue to provide value to the electricity system beyond their contract lives (i.e., beyond 20 years). Similarly, conservation costs are recovered annually on an 'as incurred basis' through GA while conservation initiatives can reasonably be expected to provide benefits to the electricity system over many years.

The Ministry is proposing in legislation to recognize the long-term benefit of specific assets to the electricity system and "bring forward" that benefit for ratepayers today by deferring some of the current costs. The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

OEB's Regulated Price Plan (RPP) – Overview

On April 20, 2017, the OEB announced new Regulated Price Plan (RPP) rates effective May 1, 2017 that include a portion of the bill reduction proposed under OFHP and the shifting of the funding of the Ontario Electricity Support Program (OESP) to provincial revenues. The full reduction from OFHP is expected to be addressed through a July 1st RPP rate adjustment.

CONFIDENTIAL

Social Program

Rural or Remote Rate Protection (RRRP)

Part of the program helps fund the costs of Hydro One customers classified into the "R2" residential rate class. There are approximately 335,000 R2 customers across the Province. These customers have some of the highest distribution costs in the Province.

- From 2001-2016 the program provided $125.4 million annually to help defray these costs.
- In the 2016 Speech from the Throne, this funding was expanded by $116.4 million to a total of $241.9 million.
- As of Jan 2017 R2 customers receive $60.50/month off their distribution costs.
- These customers still have high distribution costs and are often faced with significantly higher than average bills.

The higher than average consumption patterns coupled with higher than average distribution rates has resulted in monthly bills many view as no longer affordable or equitable.

RRRP is currently funded by rate-payers. All IESO-grid connected consumers pay a charge of $0.0021 per kilowatt-hour to off-set the costs of delivering RRRP. For an average residential customer this amounts to ~$1.60 per month. This charge will be substantially reduced once the R2 portion of the RRRP program is funded through the tax-base, rather than rate payers.

Distribution Rate Protection (DRP)

RRRP is targeted to customers based on geographic and density-based criteria. Many customers, including those in rural areas, face higher than average distribution costs, but are not eligible to receive rate protection under RRRP.

Energy is proposing legislative amendments that will broaden rate protection by creating a new distribution rate protection program to complement the Rural or Remote Electricity Rate Protection program.

Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.

CONFIDENTIAL

- Providing distribution rate protection to a broader number of consumers would help mitigate geographic-based differences in rates for the consumers who are most impacted and often see such differences as inequitable.

Mitigation for all electricity consumers would be provided by moving the existing RRRP program costs and the proposed enhancements from the electricity rate base to the tax-base.

On-Reserve First Nations Delivery Credit

On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

ENERGY has a number of Bilateral Tables with the Chiefs of Ontario (COO) and First Nations that include the Energy Table to discuss policy issues, the Hydro One Negotiating Table to discuss Hydro One shares, and the Grievance Table.

The Grievance Table process was established at the request of COO as a means to avoid litigation to resolve historic grievances related to the energy sector and prevent these issues from impeding progress on broadening the ownership of Hydro One (H1).

The cost of electricity and delivery charges were identified as the prevailing grievance at the First Nations-Ontario Energy Table meeting in Timmins in 2016, and the Minister of Energy agreed to explore options for a First Nations Rate through the Grievance Table process.

Ontario Electricity Support Program (OESP)

The OESP launched on January 1, 2016. By the end of March 2017:

- Almost 192,000 have been enrolled in the program, which is approximately 1/3 of all potentially eligible low-income customers in Ontario.

- Over $60 million in credits have been provided to vulnerable consumers.

- 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.

CONFIDENTIAL

Industrial Conservation Initiative (ICI)

Ontario is committed to providing competitive electricity rates for energy intensive consumers in the manufacturing sector while also promoting electricity conservation.

In January 2011, ICI was announced to help large industrial power users better manage their electricity costs while reducing electricity consumption during peak periods. ICI provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by about one-third. Reducing peak demand increases the reliability of the electricity system, reduces greenhouse gas (GHG) emissions and helps defer the need to procure new resources. There are now about 300 participating consumers who collectively reduced Ontario's peak demand by an estimated 1,000 MW in 2015.

Currently, ICI is available to electricity consumers who have an average monthly peak demand greater than 1 MW (i.e., Class A). Smaller electricity consumers – known as “Class B” consumers – are charged GA based on their total consumption regardless of when it occurs.

ICI provides a strong incentive for participating consumers to reduce their consumption during peak hours to reduce their cost. Note: ICI is administered by the Independently Electricity System Operator (IESO) and Local Distribution Companies (LDCs).

As of January 1, 2017, the regulatory amendments came into effect to make ICI available to electricity consumers with an average monthly peak demand greater than 1 MW. The lowering of the ICI threshold to 1MW and removal of sector restrictions was announced in the 2016 Speech From the Throne.

On March 2, 2017, as part of Ontario’s Fair Hydro Plan (OFHP), the government announced plans to further reduce the ICI threshold from 1 megawatt (MW) to 500 kilowatts (kW) and to target more small manufacturing and industrial consumers.

Effective April 13, 2017, electricity consumers and market participants in the manufacturing and greenhouse sectors in Ontario with an average monthly peak demand of greater than 500 kW and less than or equal to 1 MW are eligible to opt-in to ICI. Billing for electricity consumers that opt-in to ICI begins July 1, 2017.

- Provisions were also provided to allow electricity consumers to continue their participation in ICI if their demand falls below the monthly peak demand threshold while participating in certain prescribed Conservation and CDM programs and/or OCCSDC programs and pilots.

CONFIDENTIAL

5.0 TIMING

As part of OFHP, the government announced that eligible electricity consumers would see the reduction to their electricity bills in the summer of 2017 (i.e., July).

On April 20, 2017, OEB announced that it has adjusted the RPP rates effective May 1, 2017 to account for its estimation of the impact of a portion of GA Refinancing. The Ministry anticipates that the OEB will set an interim rate adjustment following the passage of the legislation to enable GA Refinancing that would account for the full impact (i.e., 25 per cent).

The Ministry is planning to introduce legislation in early May 2017 and develop supporting regulations in early summer 2017 to enable GA Refinancing. Note: The OPG will require legislation and regulations to be in place to support its discussions with rating agencies and third-party financing.

The timeline for all of the social programs, with the exception of the OESP, is identical as the program implementation for the regulations that follow to be passed in unison for July 1, 2017.

Some of Ontario's Fair Hydro Plan commitments for the OESP came into effect on May 1, 2017 (e.g., removal of the OESP charge from customer bills; expanding credit amounts and program eligibility). Remaining changes associated with moving the program from the rate-base to the tax-base will be proclaimed at a later date when the OESP variance account is depleted. Additional regulatory amendments needed to implement this legislative change will come into effect on the same date.

As part of the OFHP, the government also announced the expansion of ICI to enable greater participation from the manufacturing sectors in Ontario.

The April 2017 ICI amendments enabled new electricity consumer's time to opt in to the expanded program ahead of the next ICI billing period (i.e., July 1, 2017). Note: Under ICI, as set out in Ontario Regulation 429/04, eligible electricity consumers must opt in to the ICI program on or before June 15 of each calendar each year.

6.0 FINANCIAL IMPACT

1) GA Refinancing:

As it relates to the "equity injection", these changes are expected to have no impact on the Provincial net debt position as the Province's increased investment in OPG will be offset by the incremental borrowing to fund the

CONFIDENTIAL

equity injections. The Province has assumed incremental income from OPG arising from interest income on the subordinated debt which OPG will lend to the OPG Special Purpose Vehicle (SPV)/Trust. This offsets forecast increases in Provincial interest on debt expenses associated with equity injections.

Proposed legislation to enable GA refinancing has been drafted to mitigate financing, accounting and legal risks. In addition, IESO and OPG have sought independent advice and confirmation with respect to financing, accounting and legal matters.

Note: There would be a significant impact on provincial net debt and the fiscal plan if the legal, financing and accounting conditions change.

2) Social Programs:

As approved in the TB/MBC submission of Mach 1, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Rural or Remote Rate Protection	344,000,000
Ontario Electricity Support Program	140,000,000
On-Reserve First Nations Delivery Credit	15,000,000

The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $109 million as of March 1, 2017. These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs. Due to the potential range in costs of the OESP, which will depend on program uptake and any costs associated with supporting increased participation, the set allocation is required despite the variance account.

ENERGY will report back as part of PRRT with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

3) ICI Expansion:

Since ICI is funded through the electricity rate-based and not the provincial tax-base, ICI expansion will have no direct financial impact for the Province.

With respect to rate-base impacts, expanding ICI to consumers in the manufacturing and greenhouse sectors (i.e., between 500 kW and 1 MW) is

CONFIDENTIAL

expected to result in a modest increase on electricity bills for non-ICI participants starting in July 2017. For example, preliminary analysis estimates that the increase on a typical residential bill would by up to 0.66% or just over $1/month based on a 2016 bill of about $158.

Note: The extent of the non-ICI participant impact will depend on the uptake in the newly expanded ICI. The Ministry of Energy regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

7.0 STAKEHOLDER ANALYSIS

Stakeholder	Comments
Eligible Electricity Consumers	• As a result of OFHP, eligible electricity consumers will welcome the immediate reduction in electricity bills that they will experience in the short to medium term.
Electricity Agencies	• In the development of legislation to enable implementation of OFHP, the Ministry has been working closely with OEB, IESO and OPG and their independent advisors.
Local Distribution Companies (LDCs)	• The Ministry hosted LDC workshop sessions on March 16 and April 19, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation.
Chief of Ontario (COO)	• COO have publicly supported the introduction of the First Nations Delivery Credit. • ENERGY met with COO on April 26, 2017 to discuss implementation.
Future Industrial Conservation Initiative (ICI) Participants	• On March 9, 2017, the Ministry posted an ICI expansion proposal for comment on the Regulatory Registry for stakeholder comment. The Ministry has received 7 comments. • The Ministry is also working with the IESO, OCC and the CME regarding targeted outreach in relation to the ICI expansion.

8.0 RISK ASSESSMENT AND MITIGATION

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			• In order to provide financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
Managing Interest Cost Risks	M	H	• Proposed legislation has been drafted with input from third-party financers (i.e., dealers). • OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%).
Provincial Guarantee is Triggered	L	H	• The proposed legislation sets out that the province would provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also establishes assurances that the Province would: - Through the Minister of Finance as provided by Lieutenant Governor in Council, agree to guarantee any debts and obligationsTR; and - Not hinder the charging and remittance of the under-collection of GA refinancing (i.e., through a provincial undertaking and guarantee).
IESO Failure to Establish a Regulatory Asset	L	H	• Under the proposed legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to do create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• Proposed legislation to enable GA refinancing the costs associated with electricity generation facilities will be allocated across present and future electricity consumers will be set out in the Fair Allocation Amount. • The degree of constitutional risk is in direct proportion to the extent the government is not able to show a

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
			proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities. • The Fair Allocation Amount will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Social Programs			
Social Program Implementation Delays	L	M	• Work with LDCs; provide transitional provisions. • Work with Chiefs of Ontario (COO) to develop a plan to identify eligible on-reserve customers. • The bill includes transitional provisions that would ensure customers remain eligible for the rate protection and First Nations Delivery Credit from the prescribed date.
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs. • Distribution Rate Protection costs are driven by a number of variable factors including: the OEB's rate setting process; the lowest cost distributor in the prescribed cohort of "high cost distributors" and consumption patterns. • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operatory (IESO) to ensure access to data for regular forecasting • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program.

CONFIDENTIAL

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy
Non-Status Indigenous communities without reserves or Metis could raise a Charter challenge on the First Nations On-Reserve Delivery Credit Program	L	L	• This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.
3) Industrial Conservation Initiative (ICI) Expansion			
Perceived Fairness Between Electricity Consumer Classes	M	L	• The expansion of the ICI program include electricity consumers in the manufacturing and greenhouse sectors with average monthly peak demand greater than 500 kW and less than 1 MW will impact those consumers that remain outside the program (i.e., Class B and RPP electricity consumers). • Increases to electricity bills will occur for non-ICI participants to ensure full cost recovery in the electricity system. Note: the extent of the impact on other non-ICI participants would depend on the uptake in the newly expanded ICI, but is expected to be modest. • Restricting eligibility to the manufacturing and greenhouse sector helps to ensure that the expanded ICI is focused on those consumers which are most impacted by GA costs and associated economic competitiveness pressures from neighbouring jurisdictions.

9.0 JURISDICTIONAL ANALYSIS

GA Refinancing approached outlined in the proposed legislation is model on a those used in the United States (e.g., Duke Energy), where utility debt is financed by selling it to investors with recovery from ratepayers over time.

CONFIDENTIAL

The Ministry conducted no jurisdictional analysis related to the expansion of social program funding as the structure of Ontario's electricity sector, and thus the delivery of these benefits, is unique.

The ICI program is unique to Ontario and the proposed expansion would not directly impact on other jurisdictions.

10.0 PERFORMANCE MEASURES

The proposed legislation sets parameters within which refinancing of GA can proceed. These parameters include the initial percentage reduction in eligible electricity rates, the number of years that rates will increase at a rate equivalent to CPI and the length of time within which the recovery of funds must take place (i.e., by 2047). In addition, OPG's existing financial reporting process provides an additional framework for monitoring and reporting of OPG's role in OFHP.

With respect to the social programs, performance will be evaluated by the amount of funding flowed to consumers in order to reduce their electricity bills. The Ministry will work with the OEB over the coming years to ensure that data is available to determine if the programs continue to provide meaningful rate relief.

The Ministry and the OEB have engaged with the Behavioral Insights Office at the TBS to consider ways to increase program participation. Discussions are ongoing.
.

With respect to ICI, the Ministry regularly monitors electricity prices and electricity demand for all classes of electricity consumers and would be able to assess the potential impacts of the regulatory amendments, starting in July 2017.

11.0 COMMUNICATIONS

ENERGY has developed a comprehensive, two-phase media campaign to increase awareness of Ontario's existing rate mitigation measures and new proposed electricity initiatives under Ontario's Fair Hydro Plan OFHP):

- Phase I – Launched on March 13, 2017 and included radio and digital media in English and French. This was followed by multi-cultural extensions on radio in 19 languages. Phase I of the media campaign is complete.

- Phase II – Is expected to launch early Summer 2017 and will include television, radio, print, digital and social media advertising support.

ENERGY received TB/MBC approval on February 6, 2017 for an exemption from the competitive acquisition requirement under the *Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services* for the development of the electricity cost reduction public education campaign. Through this, ENERGY acquired the services of Rain43, an Agency of Record under Advertising Review Board's corporate vendor of record arrangement for advertising, public and media relations, and communication services, to develop this public education campaign with an estimates maximum value of $1,500,000.

As of July 20, 2015, PHD Canada is the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In 2016-17, through Phase I, ENERGY has spent approximately $1,000,000 on media planning and buying for radio and digital media. The cost of media space for television is substantially higher than radio; as such, ENERGY is forecasting to spend an additional $2,500,000 in 2017-18.

This campaign is integral for demonstrating Ontario's commitment to lower energy costs for ratepayers through the new proposed electricity initiatives. This campaign could also open the Ministry to increased scrutiny as critics may conclude savings are too little or too late to help those suffering from what the media has deemed energy poverty. Public perception may be unchanged as emotional triggers to rising electricity prices and the constant stream of negative news by the media could overpower the campaign.

The Ministry has assessed the risks, and deems the benefits for running this campaign outweigh any risks of not doing so. ENERGY anticipates reaction from electricity consumers is to be generally positive with an awareness that changes to the electricity system have led to a reliable, cleaner system that is now more affordable.

In addition, the communications for GA refinancing, delivery electricity social programs and ICI expansion will be referenced in ongoing announcements related to Ontario's Fair Hydro Plan (OFHP) broadly, and as necessary targeted communications for specific stakeholder group can be developed.

For example, the Ministry has retained the OCC and the CME to undertake targeted stakeholder outreach on ICI and other cost saving energy programs/measures available to the commercial and industrial sectors in Ontario.

The Ministry will ensure that the social programs are communicated effectively to stakeholders and specific target audiences. The Ministry will leverage its agencies and its relationship with LDCs to ensure eligible consumers are aware of the programs.

Chiefs of Ontario (COO) will be a vital partner in communicating the benefits of the First Nations Delivery Credit.

CONFIDENTIAL

The Ministry also believes there is opportunity for consultation on the design of the electricity bill, with a goal to refresh the regulatory framework to improve the value of the bill to the consumer across all LDCs. The Ministry proposes to convene with LDCs in July, once they've had sufficient time to implement the OFHP initiatives and prescribed messaging.

Changes of this nature will require more in-depth consultation with LDCs, as well as broader regulatory amendments to simplify the requirements, necessitating a longer period to implement. This refresh would also include opportunities to communicate OFHP savings in a more personalized and comprehensive manner. For example, each customer could receive a "personalized" message indicating how much they saved as a result of the plan.

Based on this feedback, the Ministry would aim to introduce regulatory amendments to simplify bill presentment and introduce dynamic OFHP messaging in the Fall 2017.

12.0 RECOMMENDATION

1) The Ministry of Energy is reporting back to the Treasury Board/Management Board of Cabinet (TB/MBC) on following:

    i. Implementation of Global Adjustment (GA) Refinancing;

    ii. Delivery of Electricity Social Programs (i.e., Rural or Remote Rate Protection, Ontario Electricity Support Program and First Nations On-Reserve Delivery Credit); and

    iii. Expansion of Industrial Conservation Initiative (ICI).

2) APPROVE the Ministry funding a media buy procurement with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record.

3) NOTE the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

4) NOTE the Ministry of Energy will return to TB/MBC to request a transfer of funds to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to fully recover the costs for the public education campaign.

5) APPROVE the creation of a new transfer payment line entitled "Price Mitigation Support Initiatives" under Vote/Item 2905-01, Electricity Price

CONFIDENTIAL

Mitigation, with a $1,000 placeholder, to support future rate mitigation initiatives.

Appendix:

- KPMG Opinion
- E&Y Opinion (including OPG Management Memo)

CONFIDENTIAL

From: Ronald Kwan
To: Malle Hanslep (MOF); Tobias P. Whitfield (MOF)
Cc: John Kim
Subject: RE: OPG/IESO Indemnities
Date: Wednesday, May 24, 2017 9:44:30 AM

Hi Malle,

Sure.

Ron

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: May-24-17 09:30
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO Indemnities

Ron,

Can we come to your office/boardroom at 1pm?

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 9:30 AM
To: Hanslep, Malle (MOF); Kwan, Ronald (OFA)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities

That works for me.

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

-----Original Message-----
From: Hanslep, Malle (MOF)
Sent: May 24, 2017 9:27 AM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities

I think that we should probably attend the 2 pm meeting re: guarantee in person so perhaps we can also meet with Ron and John at 1pm down at the OFA.

Would that work?

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 8:47 AM

To: Kwan, Ronald (OFA); Hanslep, Malle (MOF)
Cc: Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

That works for me too.

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: Ronald Kwan
Sent: Tuesday, May 23, 2017 5:36 PM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John - maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,

>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Hanslep, Malle (MOF)
To:	Tobias P. Whitfield (MOF); Ronald Kwan
Cc:	John Kim
Subject:	RE: OPG/IESO Indemnities
Date:	Wednesday, May 24, 2017 9:31:15 AM

Ron,

Can we come to your office/boardroom at 1pm?

Malle

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 9:30 AM
To: Hanslep, Malle (MOF); Kwan, Ronald (OFA)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities

That works for me.

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

-----Original Message-----
From: Hanslep, Malle (MOF)
Sent: May 24, 2017 9:27 AM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities

I think that we should probably attend the 2 pm meeting re: guarantee in person so perhaps we can also meet with Ron and John at 1pm down at the OFA.

Would that work?

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 8:47 AM
To: Kwan, Ronald (OFA); Hanslep, Malle (MOF)
Cc: Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

That works for me too.

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: Ronald Kwan
Sent: Tuesday, May 23, 2017 5:36 PM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John - maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Whitfield, Tobias P. (MOF)
To: Malle Hanslep (MOF); Ronald Kwan
Cc: John Kim
Subject: RE: OPG/IESO Indemnities
Date: Wednesday, May 24, 2017 9:30:05 AM

That works for me.

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

-----Original Message-----
From: Hanslep, Malle (MOF)
Sent: May 24, 2017 9:27 AM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Kim, John (OFA)
Subject: RE: OPG/IESO Indemnities

I think that we should probably attend the 2 pm meeting re: guarantee in person so perhaps we can also meet with Ron and John at 1pm down at the OFA.

Would that work?

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 8:47 AM
To: Kwan, Ronald (OFA); Hanslep, Malle (MOF)
Cc: Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

That works for me too.

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: Ronald Kwan
Sent: Tuesday, May 23, 2017 5:36 PM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John - maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Hanslep, Malle (MOF)
To:	Tobias P. Whitfield (MOF); Ronald Kwan
Cc:	John Kim
Subject:	RE: OPG/IESO Indemnities
Date:	Wednesday, May 24, 2017 9:27:52 AM

I think that we should probably attend the 2 pm meeting re: guarantee in person so perhaps we can also meet with Ron and John at 1pm down at the OFA.

Would that work?

-----Original Message-----
From: Whitfield, Tobias P. (MOF)
Sent: May 24, 2017 8:47 AM
To: Kwan, Ronald (OFA); Hanslep, Malle (MOF)
Cc: Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

That works for me too.

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: Ronald Kwan
Sent: Tuesday, May 23, 2017 5:36 PM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John - maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.

>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>

>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Ronald Kwan
Subject: RE: OPG/IESO Indemnities
Date: Tuesday, May 23, 2017 5:27:36 PM

Works for me as well. That reminds me that the guarantee is lead by OFA's CMD staff. But if you'd like a policy side perspective, happy to provide our input.

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, May 23, 2017 4:47 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OPG/IESO Indemnities

Yes that would be fine with me

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Whitfield, Tobias P. (MOF)
Sent: Tuesday, May 23, 2017 16:28
To: Kim, John (OFA); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: May 23, 2017 4:18 PM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

Hi Toby,

We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.

Any time is good for a chat.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, May 23, 2017 4:13 PM
To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
Subject: OPG/IESO Indemnities

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
Toby

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Whitfield, Tobias P. (MOF)
To:	John Kim; Ronald Kwan
Cc:	Malle Hanslep (MOF)
Subject:	RE: OPG/IESO Indemnities
Date:	Tuesday, May 23, 2017 4:29:42 PM

John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: May 23, 2017 4:18 PM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

Hi Toby,

We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.

Any time is good for a chat.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, May 23, 2017 4:13 PM
To: John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: OPG/IESO Indemnities

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in

connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Tobias P. Whitfield (MOF); Ronald Kwan
Cc:	Malle Hanslep (MOF)
Subject:	RE: OPG/IESO Indemnities
Date:	Tuesday, May 23, 2017 4:18:25 PM

Hi Toby,

We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.

Any time is good for a chat.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, May 23, 2017 4:13 PM
To: John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: OPG/IESO Indemnities

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
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:	Whitfield, Tobias P. (MOF)
To:	Ronald Kwan; John Kim
Cc:	Ken Kandeepan; Mike Manning; Malle Hanslep (MOF)
Subject:	RE: OPG/IESO Indemnities
Date:	Tuesday, June 06, 2017 11:01:56 AM
Attachments:	Provincial Indemnity comments June 6 2017.docx

Further to the below, please find attached our comments on the draft indemnity.

Please let us know when you have had a chance to review and are available to discuss.

Thanks
Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 6, 2017 9:59 AM
To: Kwan, Ronald (OFA) (Ronald.Kwan@ofina.on.ca); Kim, John (OFA) (John.Kim@ofina.on.ca)
Cc: Kandeepan, Ken (OFA); Manning, Mike (OFA) (Mike.Manning@ofina.on.ca); Hanslep, Malle (MOF)
Subject: OPG/IESO Indemnities

Further to our conversations on the indemnities, it appears that this request will go to the MOF instead of TBS.

Energy has asked us to expedite this matter, as there is a board meeting of OPG or IESO early next week, and they want to have an approval before then so that this can be signed off on at that meeting. We still need some additional information as to the parameters of what is driving the timeline – for instance, it appears that IESO will have to act before OPG and that OPG may not need the indemnity as soon, but we are also not sure if OPG is asking for an indemnity before taking any other actions.

We are preparing some comments on the draft indemnity and note, and will forward those shortly.

We will also reach out to Energy Legal to ask who their clients are, and initiate the conversation between the Energy policy staff and yourselves. Energy Legal has asked us what our timeline is, and I indicated that we would need to discuss with you before being able to give such an indication.

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

CONFIDENTIAL AND PRIVILEGED LEGAL ADVICE – June 6, 2017

FAA 11.3 provides that no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation – every agreement that provides for the payment of money by the Crown is deemed to contain a provision that payment by the Crown of moneys that come due under the agreement shall be subject to an appropriation to which that payments can be charged being available in the fiscal year in which the payment becomes due or the payment having been charged to an appropriation for a previous fiscal year.

Any payment under the indemnity is subject to an appropriation being available. Does there need to be an appropriation available at the time of execution of the indemnity, if it is not expected that payments will be needed this year? Energy will need to obtain supplementary estimates if it doesn't have sufficient funds available if called upon to pay under the indemnity.

Comments/Questions:

OPG

1. Indemnity is in favour of OPG, OPG subs, and their directors, officers and employees (including if they are acting in a different capacity at request of Corporation). When might they be acting in a different capacity? What will the corporation ask? Will the "financing entity" be considered an OPG sub and benefit from this indemnity?
2. Do we know what the corporate structure of the financial entity is proposed to be, and who will be acting on behalf of the financial entity and in what capacity?
3. Has OPG given a standard indemnity to its directors and officers that would be called upon first before the indemnity from the Province?
4. What type of insurance does OPG have in place to cover possible risks both for itself and for its directors, officers and employees?
5. Overall it would be better if the business case for the request set out in more detail OPG's and its subs' expected roles in the implementation of the Fair Hydro Plan. Then it could identify which of those roles present the most risk and how the risk can be mitigated.
6. Is it expected that OPG might have to sign as promoter? What about Province? Would indemnified individuals be signing on behalf of OPG as promoter or on behalf of financial entity? What sorts of liability might OPG, its directors, officers and employees have here? Is it for misrepresentations in prospectus? Is there any other risk?
7. What is meant by the sentence "This risk arises in part because of the kind of market that OPG and IESO indirectly are to participate in and the steps that investors could take to protect their investments"? This should be elaborated.
8. What does OPG do as Financial Services Manager?
9. Need a better description of any pre-existing indemnities including OPG indemnity to directors/officers.

10. OPG's objects are amended to include new objects related to their new objects under the Fair Hydro Plan. Why is it considered that these activities might not be carried out in good faith or in the best interest of the corporation?
11. Why doesn't s. 39(2) extend to directors and officers as well? Was there a specific reason?
12. Are there any issues relating to US securities law and liabilities that the Province is being asked to indemnify that we should be considering?

Comments on actual wording of indemnity agreement, May 18, 2017

- Is it possible to limit the indemnity to specific named subs of OPG?
- Is 2nd recital "may face risk of liability due to or as a result of the Fair Hydro Plan" necessary?
- Par. 1 – how is a loss "indirectly" suffered?
- Par. 1 – covers all punitive and/or consequential damages and loss of profits and damages in respect of economic loss and/or loss of opportunity? Should OPG be covered for "loss of opportunity/economic loss? Should OPG be covered for what damages/payments it actually incurs or must pay as a result of these damages and suits?
- Explain, the capacity in which a director, officer or employee might be working?
- Par. 3(b) – "except to the extent that provision of same would cause the Protected party to lose its entitlement to claim privilege with respect to same" – how standard is this type of exclusion – not seen before.
- 7(b) – why would actions be take "on the Province's part" – just wondering whether this is necessary. Need to compare these reps to other agreements. 7(c) doesn't seem to be comprehensive as it does quality the availability of equitable remedies such as specific performance and injunction and execution not available against Crown.
- Need to think further about "due diligence" defense exception wording.

Prepared by MOF Legal – June 6, 2017

From: Gavin He
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO indemnity Responses to OFA Questions
Date: Wednesday, June 28, 2017 3:03:25 PM
Attachments: OFHP_GA - OPG IESO Indemnities - FAA s28 - June27- BN_v05_clean.docx
OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo CEO-DM_v5_Clean.doc
OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo DM-Min_v5_Clean.doc
Ministry of Energy s28 request - response letter_v3.doc
1 - OPG Indemnity OFHP 2017 s 28 Approval.doc
1 - 20170626-OPG Indemnity Agreement - FINAL.DOCX
2 - IESO Indemnity OFHP 2017 s 28 Approval .doc
2 - 20170626-IESO Indemnity Agreement - FINAL.DOCX
Signed Memo.pdf
20170626--s.28 business case - IESO and OPG Indemnity OFHP -FINAL.DOCX
20170626-Exhibit A - Contingent Liability Chart - OPG and IESO indemnity....xlsx

---

Hi Ron,

Please find attached the final package for your approval. I will bring you the hard copy of the package for your signature.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 1:25 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks Bruno.

Ron

From: Bruno Amara
Sent: June-28-17 11:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron/John

There are a couple of final edits from Legal in attached, to clarify scope of the indemnity. I'm attaching for your review.

Bruno

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

Sent: Wednesday, June 28, 2017 11:01 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached some more comments that I hope reflect the most recent discussions.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 28, 2017 9:08 AM
To: Hanslep, Malle (MOF)
Cc: He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Malle,

That paragraph was my attempt to summarize paragraphs 1 and 2 from the OPG Agreement. In particular 2 below. But I wasn't providing any value-added in terms of interpreting paragraph 2, and I wasn't making the connection to the waiver. I'm happy to take your advice on the wording.

> 2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 6:33 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

I reviewed the briefing note and have a question regarding the description of scope of indemnity in the first paragraph and on p. 2 – who the indemnity applies to. The complication is the activities of the OPG directors, officers and employees when they at the request of OPG undertake another activity in the implementation of the OFHP and in particular respecting OPG's role as Financial Services manager on behalf of the financing entity if it's a trust. This is explained on p. 8 of Energy's business case and of course is mentioned expressly in the OPG indemnity. It doesn't really seem that these individuals would be appointed as directors, officers and employees of the financing entity trust but it's possible. Maybe the language in these 2 paragraphs has been carefully written to cover these potential roles as it does mention "trustee" so that these individuals might be acting as a trustee of the financing entity in that case.

I wrote the below wording based on p. 8 so just send it for your consideration. I'm not sure if it's better or if you have specifically considered this point. I didn't mark up the note.
The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees. In the case of directors, officers and employees of OPG and its subsidiaries this could include where at the request of OPG, they undertake activities in another capacity in the implementation of the OFHP or OPG's role as Financial Services Manager of the financing entity, for example, signing documents on behalf of a financing entity that is a trust.

Also on p. 5 under Accounting Treatment, change MENE to Ministry of Energy.

Thank you.

Malle

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 5:18 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: He, Gavin (OFA)
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi

If you are still making edits to the briefing note you can send them along but for now, attached is a markup and clean version with Toby's edits, IESO agent references removed and a couple of other minor edits. We will have approval package for sign-off tomorrow.

Thanks
Bruno

From: Bruno Amara
Sent: Tuesday, June 27, 2017 4:35 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

HI Malle

Sorry, just to clarify, are you still providing comments/edits to Toby's copy, or was that your edit which we can make.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:11 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I don't' think the indemnity covers IESO agents any more based on the last draft I saw.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 4:10 PM
To: Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK, we have a couple of minor edits but will wait for your copy.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:08 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Yes I think I may have a few comments and will follow up using Toby's mark-up as a base.

From: Whitfield, Tobias P. (MOF)

Sent: June 27, 2017 3:48 PM
To: Bruno Amara
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno – I have made some further edits to the BN reflecting our discussion. Malle is still reviewing and may have some more comments.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 9:25 AM
To: Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)

Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if

any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment

below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions

>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel

> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>

> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"), and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of OPG or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- IESO and OPG have stated that without these indemnities and waivers they will not be able to participate in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.

In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity, for example, signing documents on behalf of a financing entity that is a trust at the request of OPG or acting as directors, officers or employees of entities that are carved out of the Indemnity Agreement, where they are doing so in the implementation of the OFHP and are also a director, officer or employee of OPG or any of OPG's subsidiaries.

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected Persons in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity (though to the extent that the Protected Person makes a claim on an indemnity that creates a loss for another Protected Person, such as OPG and its subsidiaries and the IESO, such other Protected Person may make a claim under an Indemnity Agreement). The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Waiver of claim provision

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for wilful misconduct, dishonesty or gross negligence.

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG,

(see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

The Minister of Energy had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are current being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

DESCRIPTION OF RISK AND RISK MITIGATION

The ONFHP is a novel program, and as a financing structure it is the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.
- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance, to the extent already paid under such insurance.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or wilful misconduct.

Although there is a provision in the Indemnity Agreements that provides that a claim relating to the OFHP should initially be made on any indemnity that is already in place from the IESO or OPG for the benefit of their respective directors, officers or employees before making a claim on the Province's indemnity, if the IESO or OPG suffer a loss because they have indemnified such director, officer or employee they would be able to make a claim under an Indemnity Agreement. Thus, the Province would, to the extent such a claim was not covered by an insurance policy, be liable for such a loss of the IESO or OPG.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June 28, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

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

Ontario

June 28, 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Section 28 Approval for Indemnity Agreements In Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act* (*FAA*), the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.
- In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Attached is a briefing note for your consideration. Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Section 28 Approval for Indemnity Agreements in Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act (FAA)*, the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the Ontario's Fair Hydro Plan.

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.
- In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Scott Thompson

Attachments

c. Marianne Nguyen
Gadi Mayman
Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the *Financial Administration Act* of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the *Financial Administration Act,* of the Indemnity Agreements for OPG and the IESO in order to allow them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Yours sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-325-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-325-0374

June 29, 2017

TO: **Minister of Energy**

Approval pursuant to section 28 of the
Financial Administration Act

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to Ontario Power Generation Inc., certain of Ontario Power Generation Inc.'s subsidiaries (as set out in the attached form of Indemnity Agreement) and each of their respective directors, officers and employees, substantially in the form set out in the attached Schedule.

Charles Sousa
Minister of Finance

Attachment

EXECUTION VERSION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this 1st day of June, 2017.

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**")

OF THE SECOND PART

WHEREAS the Corporation and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the "**Fair Hydro Plan**");

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan.

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries (except for any such subsidiary that is a financing entity as defined in the Act) and each of their respective directors, officers, and employees (collectively the "**Protected Persons**" and individually, a "**Protected Person**") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including, without limitation, any direct, special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "**Losses**"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or

informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "**Claim**") arising, directly or indirectly, as a result of each Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

3. A Protected Person shall not be entitled to be indemnified in respect of Losses:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to such Protected Person to the extent that such Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from such Protected Person's dishonesty, gross negligence or willful misconduct; for greater clarity the Province acknowledges and agrees that any finding that such Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 3(c) or otherwise disentitle such Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, to the extent such action or proceeding arises from circumstances in which such Protected Person did not have reasonable grounds for believing that such Protected Person's conduct was lawful.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable, deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, furnish to the Province copies of any document, or provide to the Province any information, that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Person or another Protected Person to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and

(d) promptly take all reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person hereunder except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person(s). Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the

Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

6. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall apply only to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee of the Corporation and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director, officer, employee of that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including, without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested, so long as the Protected Person is carrying out its obligations under section 4 of this agreement. A Protected Person shall promptly repay to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation), provided that this waiver shall not apply to any claims of dishonesty, gross negligence or willful misconduct against a Protected Person who is an individual.

10. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to the application of equitable principles and that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, section 11.3 of the *Financial Administration Act* (Ontario) and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Persons.

12. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first written above.

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-325-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-325-0374

June 29, 2017

TO: **Minister of Energy**

Approval pursuant to section 28 of the
Financial Administration Act

For the purpose of section 28 of the *Financial Administration Act*, I hereby approve the giving of an indemnity by Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy, to the Independent Electricity System Operator and each of its respective directors, officers and employees, substantially in the form set out in the attached Schedule.

Charles Sousa
Minister of Finance

Attachment

EXECUTION VERSION

INDEMNITY

THIS INDEMNITY effective as of this 1st day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
(hereinafter the "**Corporation**")

OF THE FIRST PART,

Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy

(hereinafter called the "**Province**"),

OF THE SECOND PART

WHEREAS the Corporation, and its directors, officers and/or employees, may, or in certain circumstances are or will be required to carry out certain activities with respect to (i) the implementation of *the Ontario Fair Hydro Plan Act, 2017* (the "Act"), (ii) the regulations made pursuant to the Act; and/or (iii) any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act), (the Act, such regulations and agreements, collectively referred to as the "Fair Hydro Plan");

AND WHEREAS the Corporation, and its directors, officers and/or employees may face risk of liability arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, the Fair Hydro Plan;

NOW THEREFORE, in consideration of the sum of $1.00 now paid by the Corporation to the Province and other good and valuable consideration (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify, defend, and save harmless the Corporation and its directors, officers, and employees or a member of a committee or panel established by the directors of the Corporation (collectively the "Protected Persons" and individually, a "Protected Person") from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, "Losses"), as a result of any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation

(formal or informal), hearing and/or other proceeding of any nature or kind whatsoever (any of the foregoing being a "Claim") arising, directly or indirectly, as a result of the Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan.

2. A Protected Person shall not be entitled to be indemnified in respect of such Protected Person's Losses, or a portion thereof:

    (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund; or

    (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or

    (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed to conduct such reasonable investigation as necessary to provide the Corporation with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws, or any information provided to a financing entity in relation thereto, contained no misrepresentation shall not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

    (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

3. Each Protected Person shall:

(a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);

(b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claim(s) that is in the possession or under the control of the Protected Person (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to the same);

(c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and

(d) promptly take all reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province, such consent not to be unreasonably withheld or delayed. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim(s), the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be Losses to which this indemnity extends.

5. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has indemnified

the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.

6. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.

7. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with a Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within ninety (90) days of the Protected Person completing all steps outlined in paragraph 3 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

8. The Province hereby waives any claim it could otherwise make against a Protected Person who is an individual, whether now or in the future, relating in any way to the Corporation's and/or any such Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person who is an individual is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation), provided that this waiver shall not apply to claims of gross negligence, dishonesty, or willful misconduct against a Protected Person who is an individual.

9. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with this indemnity agreement:

    (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;

    (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

    (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial*

Administration Act (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

10. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons that are not party to this indemnity agreement of the covenants and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants and obligations on behalf of such Protected Persons.

11. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. The provisions of this indemnity agreement and the benefit of all covenants and obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

[Signature Page Follows]

NOW THEREFORE, the parties have executed this indemnity agreement effective as of the day and year first above written.

THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

June 27, 2017

MEMORANDUM TO: Charles Sousa
Minister of Finance

FROM: Glenn Thibeault
Minister of Energy

RE: Request for section 28 approval of indemnities to the IESO, OPG, OPG's subsidiaries, and respective directors, officers, and employees in relation to the Ontario Fair Hydro Plan

---

I am writing to request approval under section 28 of the *Financial Administration Act* ("FAA") the forms of indemnity for the IESO, its directors, officers, and employees; and OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*")) and their respective directors, officers, and employees (collectively the "Protected Persons"). Ministry of Finance and Ministry of Energy staff have worked together to review OPG's and IESO's indemnity requests and finalize materials.

OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their activities in carrying out the implementation of the Plan. OPG has also requested this form of indemnity for its subsidiaries (other than any financing entities as defined under the Act) ("Subsidiaries") and respective directors, officers and employees. The Ministry of Energy has committed to providing these indemnities. The Minister of Energy ("Minister") has been briefed and supports this request for approval.

The *Act* enables the implementation of the Ontario Fair Hydro Plan (the "Plan"). Under the Plan, the government has proposed to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the Plan. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the Plan.

The Plan is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG, OPG's Subsidiaries, and IESO in carrying out their roles in implementing the Plan will fall outside of the usual operations/business risk that these corporation's face, there is a risk that these corporations and their directors, officers, and employees may be subject to increased liability specifically due to their roles with the Plan. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments.

The indemnities will provide OPG, OPG's Subsidiaries, the IESO and their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the Plan.

My recommendation to provide this approval is based on the attached submission prepared by staff. The attached submission includes a description of the contingent liabilities. The cost or estimated cost of the contingent liabilities cannot be quantified. Should the payment be required, the Ministry will return to TB/MBC for an increase in its allocation.

Approval of these indemnities is requested by June 30, 2017. Failure to obtain approval could jeopardize the implementation of the Plan.

Thank you for your consideration of this request for section 28 approval. Please contact the Ministry of Energy should you have any questions pertaining to the request.

Sincerely,

Glenn Thibeault
Minister

Enclosures

Request for Approval
Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

1. MINISTRY REQUEST

On March 2, 2017, the Premier announced Ontario's Fair Hydro Plan (the "ONFHP"), under which the government proposes to take steps to lower electricity bills on an after-tax basis by 25 per cent for a typical residential customer relative to what those bills would otherwise have been without the ONFHP. This proposed 25 per cent rate relief measure will be inclusive of the 8 per cent rebate that is already in effect under the *Ontario Rebate for Electricity Consumers Act, 2016* and the savings that are anticipated to result from the proposed shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to provincial revenues. Changes to the Global Adjustment ("GA") are also proposed to be a component of the 25 per cent rate relief under the ONFHP.

On June 1, 2017, Bill 132 received royal assent, which marked the coming into force of the *Ontario Fair Hydro Plan Act, 2017* (the "*Act*"). The *Act* enables the implementation of the ONFHP. The implementation of the ONFHP will require the participation of Ontario Power Generation ("OPG") and the Independent Electricity System Operator ("IESO") among other government entities. Both OPG and the IESO have each requested an indemnity covering their respective corporations, directors, officers and employees in relation to their respective activities in carrying out the implementation of the ONFHP. OPG is also seeking an indemnity for its subsidiaries (not including any financing entities as defined in the *Act*) ("Subsidiaries") and their respective directors, officers and employees.

The Ministry is seeking the approval pursuant to section 28 of the *Financial Administration Act* (Ontario) to provide these indemnities, in the forms attached as Appendix "A" and Appendix "B" (collectively the "Indemnities" and individually the "Indemnity"), on behalf of the Crown to OPG and the IESO, respectively.

Timing:

Approval is sought by June 30, 2017. The Indemnities are required in conjunction with the coming into force of the *Act* (came into force on June 1, 2017).

2. RECOMMENDATION

Approve the giving of the Indemnities to OPG and IESO effective as of the date upon which the Act was passed (June 1, 2017).

3. BACKGROUND

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to

investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)
- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO,

its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

4. ANALYSIS SUPPORTING RECOMMENDATION

(a) Why the Indemnities are being sought?

(i) Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith".

Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

(ii) Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

> "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

> "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

(iii) Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under

the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.
Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

(b) Description of Risk and any Risk Mitigants.

The ONFHP is a novel program, the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments as described in section 3 above.

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

1) In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.

2) In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.

3) The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.

4) The Indemnities do not apply with respect to Losses for which coverage is provided under insurance or another indemnity, to the extent already paid under such insurance, or so indemnified under such indemnification in relation to the claims.

5) The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or willful misconduct.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

A contingent liability table is attached as Appendix "C".

(c) Scope of liability in the Indemnities

The Province would agree to indemnify and hold harmless the IESO and OPG, and OPG's subsidiaries as well as their respective directors, officers and employees from any claims, liabilities, costs or losses that might arise to the Protected Person as a result of their roles in carrying out activities related to the implementation of the ONFHP.

Under the Indemnities, a Protected Person would not be entitled to be indemnified in respect of Losses, or a portion thereof:

(a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims fund;

(b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities;

(c) that are the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; or

(d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in

which a Protected Person did not have reasonable grounds for believing was reckless as to their belief that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

(d) Other Substantial Variances from the Province's Indemnity Template

The other substantial variances in the Indemnities includes a waiver provision whereby the Province waives its right to bring any claim it could otherwise make against a Protected Person who is an individual relating in any way to the Protected Persons' activities in the implementation, or otherwise relating to the ONFHP (including where a Protected Person is acting at the request of the corporation, in a different capacity than as a director, officer or employee of the Corporation – e.g. for example, where a financing entity is a trust, OPG's directors/officers/employees may need to sign the securities offering documents, but not in the capacity as OPG's directors/officers/employees, as the offering documents will not be the offering documents of OPG. The directors/officers/employees will be performing these functions as a result of OPG acting as a Financial Services Manager of the financing entity).

However, this waiver does not apply to gross negligence, dishonesty or willful misconduct claims that may be brought by the province against the applicable Protected Persons. The risk associated with providing this waiver is likely low given that it is consistent with the gross negligence carve out provided for in the Indemnity Agreements (section 2(c) in the IESO Indemnity and section 3(c) in the OPG Indemnity) and because the Province is unlikely to bring a claim against a Protected Person for Losses they have agreed to indemnify them for.

OPG has indicated that the inclusion of this waiver is very important to their Board given that its directors and officers are undertaking the ONFHP activities at the request of the Province. Accordingly, the directors, officers, employees do not want to take on liability towards the Province, as shareholder of OPG. The Indemnity is being provided to the IESO for consistency.

The Indemnities also include a representations and warranties section (section 8 in the IESO Indemnity and section 9 in the OPG Indemnity), which includes general representations and warranties with respect to the Province's authority to enter into these agreements and confirming that they have obtained the appropriate FAA approvals. We do not believe this variance poses a significant risk to the Province.

(e) Effect of failure to obtain section 28 approval

If the requested Indemnities are not provided, this could impact the OPG, OPG's Subsidiaries and IESO's (including their respective directors, officers and employees') willingness to fully undertake their roles in implementing the ONFHP. This may potentially jeopardize the successful implementation of this plan. For example, IESO directors may not be willing to carry out certain activities that would fall outside of the scope of its typical business activities and mandate if they view these as creating a risk of liability. Providing the Indemnities, would allow OPG, OPG's Subsidiaries, and IESO, along with their directors, officers and employees to more confidently carry out their role in implementing the ONFHP.

APPENDIX "A"

PROPOSED INDEMNITY AGREEMENT FOR OPG
(Attached as a separate document)

APPENDIX "B"

PROPOSED INDEMNITY AGREEMENT FOR IESO
(Attached as a separate document)

APPENDIX "C"

CONTINGENT LIABILITY TABLE
(Attached as a separate document)

APPENDIX "B"

Contingent Liabilities

Request for Approval of Minister of Finance Pursuant to Section 28 of the *Financial Administration Act* (Ontario)

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the OPG, OPG's subsidiaries (not including the financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the Ontario Power Generation (“OPG”). OPG has requested an indemnity covering their respective corporation, corporation's subsidiaries (not including any financing entities as defined under the Act) and their respective directors, officers and employees against any claims that may arise in relation to their respective roles with respect to the Ontario Fair Hydro Plan. The Indemnity provides a carve out for acts of gross negligence, dishonesty and willful misconduct.	Providing this indemnity will facilitate OPG in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by OPG or its subsidiaries (not include the financing entities as defned under the Act), or their respective directors, officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors, officers and employees; and medium with respect to the corporations themselves.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity’s debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the *Ontario Fair Hydro Plan Act, 2017* , its respective regulations or the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party. The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

Contingent Liability	Description/ Explanation	Justification	Risk Trigger	Within Area of Control (Yes/No)	Probability of Liability (High/Medium/ Low)	Duration of Liability (Include End Date)	Maximum Estimated Financial Exposure	If Exposure Not Quantified, Why?	Risk Mitigants (Mitigation Strategy)	Impact of Non-Approval
Indemnity to the IESO, its directors, officers, members of a committee or panel established by the directors, and employees (the "Protected Persons") to indemnify, defend, and save harmless the Protected Persons from and against all losses, costs, damages, charges, expenses, demands, liabilities, fines, penalties, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by a Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of	On June 1, 2017 the *Ontario Fair Hydro Plan Act, 2017* (the "Act") received Royal Assent. Under the Act, the implementation of the Ontario Fair Hydro Plan will require the participation of the IESO. The Act would impose certain obligations and requirements on IESO to carry out various activities in relation to the implementation of the Ontario Fair Hydro Plan such as the creation of a regulatory asset in relation to the GA financing component of the Ontario Fair Hydro Plan, the conveyance of that asset to OPG's financing entity (the SPV) and providing a servicing role in recovering OPG's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. IESO has requested an indemnity covering it, and its respective directors, officers	Providing this indemnity will facilitate IESO in carrying out its role in implementing the Ontario Fair Hydro Plan.	Claim, loss or costs incurred by the IESO, its directors (including a member of a committee or panel established by the directors), officers or employees in carrying out their respective roles with respect to implementing the Ontario Fair Hydro Plan.	No	The Probability of risk of liability for the Province is low with respect to the directors (inlucidng a member of a committee or panel established by the directors), officers and employees; and medium with respect to the corporation itself.	No specified end date.	Maximum financial exposure is uncertain as there various sources and types of potential claims. It is expected, however, that the largest liability risks would be related to potential losses related to OPG special purpose entity's debt offerings. The maximum financial exposure, therefore, would likely be linked to the amount of OPG special purpose entities debt offerings.	The risk is theoretical and cannot be quanitified.	The Indemnity is limited specifically to claims arising in relation to the Protected Persons' respective roles in implementing the Ontario Fair Hydro Plan under the Act, its respective regulation, and/or any agreements relating to the implementation of the Act or regulations, including with any financing entity (as defined in the Act). The Indemnities do not apply with respect to Losses to the extent which coverage is paid under insurance, to the extent which indemnification is already provided under any other indemnity or is brought about by the dishonesty, gross negligence or willful misconduct of the Protected Persons.	Could jeopordize the successful implementation of the Ontario Fair Hydro Plan.

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim; Gavin He
Subject: RE: OPG/IESO indemnity Responses to OFA Questions
Date: Wednesday, June 28, 2017 1:24:42 PM

Thanks Bruno.

Ron

From: Bruno Amara
Sent: June-28-17 11:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron/John

There are a couple of final edits from Legal in attached, to clarify scope of the indemnity. I'm attaching for your review.

Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Wednesday, June 28, 2017 11:01 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached some more comments that I hope reflect the most recent discussions.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 28, 2017 9:08 AM
To: Hanslep, Malle (MOF)
Cc: He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Malle,

That paragraph was my attempt to summarize paragraphs 1 and 2 from the OPG

Agreement. In particular 2 below. But I wasn't providing any value-added in terms of interpreting paragraph 2, and I wasn't making the connection to the waiver. I'm happy to take your advice on the wording.

> 2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 6:33 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

I reviewed the briefing note and have a question regarding the description of scope of indemnity in the first paragraph and on p. 2 – who the indemnity applies to. The complication is the activities of the OPG directors, officers and employees when they at the request of OPG undertake another activity in the implementation of the OFHP and in particular respecting OPG's role as Financial Services manager on behalf of the financing entity if it's a trust. This is explained on p. 8 of Energy's business case and of course is mentioned expressly in the OPG indemnity. It doesn't really seem that these individuals would be appointed as directors, officers and employees of the financing entity trust but it's possible. Maybe the language in these 2 paragraphs has been carefully written to cover these potential roles as it does mention "trustee" so that these individuals might be acting as a trustee of the financing entity in that case.

I wrote the below wording based on p. 8 so just send it for your consideration. I'm not sure if it's better or if you have specifically considered this point. I didn't mark up the note.
The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees. In the case of directors, officers and employees of OPG and its subsidiaries this could include where at the request of OPG, they undertake activities in another capacity in the implementation of the OFHP or OPG's role as Financial Services Manager of the financing entity, for example, signing documents on behalf of a financing entity that is a trust.

Also on p. 5 under Accounting Treatment, change MENE to Ministry of Energy.

Thank you.

Malle

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 5:18 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: He, Gavin (OFA)
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi

If you are still making edits to the briefing note you can send them along but for now, attached is a markup and clean version with Toby's edits, IESO agent references removed and a couple of other minor edits. We will have approval package for sign-off tomorrow.

Thanks
Bruno

From: Bruno Amara
Sent: Tuesday, June 27, 2017 4:35 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

HI Malle

Sorry, just to clarify, are you still providing comments/edits to Toby's copy, or was that your edit which we can make.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:11 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I don't' think the indemnity covers IESO agents any more based on the last draft I saw.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 4:10 PM
To: Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK, we have a couple of minor edits but will wait for your copy.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:08 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Yes I think I may have a few comments and will follow up using Toby's mark-up as a base.

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 3:48 PM
To: Bruno Amara
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno – I have made some further edits to the BN reflecting our discussion. Malle is still reviewing and may have some more comments.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 9:25 AM
To: Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]

Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions

>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.

>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno

>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use,

copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He
Subject: RE: OPG/IESO indemnity Responses to OFA Questions
Date: Tuesday, June 27, 2017 3:32:20 PM

Hi Ron

I spoke to Toby. As I understand it issue is as follows. OPG and IESO provide corporate indemnities. Case may arise where, say a director, makes a claim against OPG related to FHP work. OPG can then make a claim against the provincial indemnity.

I think concern is not that this in inconsistent with intent of provincial indemnity (to indemnify against claims related to implement PFHP), but rather being clear that claim could be made in this way. On the surface it may be interpreted as OPG passing on costs to the province. Energy does not want to change materials at this point. We can add a clarification bullet in the briefing note. I will draft something and circulate.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:17 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

If there is any ambiguity in the business case, can we clarify what the intent is in the s.28 briefing note?

Thanks,
Ron

From: Bruno Amara
Sent: June 27, 2017 2:55 PM
To: Ronald Kwan
Cc: Gavin He
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron

There is a last minute issue. I don't fully understand but will call legal for an explanation.

Whatever, it is bottom-line is Energy not wanting to change wording at late hour and us making call if we are OK with this. Just a heads up but I'll try and understand this better and get back to you.

Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 2:51 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I had a follow up call with Harkamal. Energy is pushing back on revising the business case. They think that given the late notice, and that there is not a substantive change, they are uncomfortable revising the briefing materials, but have agreed to follow up with an email outlining their understanding. Please let me know if you are ok with that approach.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 2:00 PM
To: 'Bruno Amara'
Cc: 'Salman Qadir'; Kim, John (OFA); He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I spoke with Harkamal, and she indicated that she now believes that OPG and the IESO would be subject to a claim on the indemnity to cover a claim made by a director, officer or employee on an indemnity provided by the corporation, and that she understands it was the policy intention to cover such a claim under the Provincial indemnity. I asked her to revise the business case to make that clear.

I want to check with you, as I think that it is important to make sure that this point is clear. I am not sure that it would make sense to not cover such a claim, while covering claims made directly against the corporation. However, I also think that the way it is set out to first have the claim against the corporate indemnity is a bit confusing if that is the intent, except to the extent that it gives an opportunity for such a claim to first be covered by any relevant insurance policy that the corporations may have.

Please let me know if you have further thoughts on this. Otherwise, I believe that Energy will forward a revised business case that can be included in the package.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 9:51 AM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal,

It has occurred to me that even though we require the use of existing indemnities before calling on the Provincial indemnity, if a director/officer/employee of OPG or IESO made a claim on the OPG/IESO indemnities, that would allow the OPG/IESO to make a claim on the Province's indemnity (if not covered by an insurance policy).

Is this a correct interpretation and has this possibility been discussed?

Thanks
Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:46 PM
To: Whitfield, Tobias P. (MOF); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby – as discussed – OPG revised section 2 (see highlighted language) so that any directors, officers, employees of a financing entity are still included in the definition of "Protected Person" where he/she is a director, officer, employee of OPG or OPG's Subs.

Other than this, their changes for the most part were more word smithing. I've highlighted in yellow the changes OPG agreed to stand down on.

Thanks very much again,

Harkamal

From: Whitfield, Tobias P. (MOF)

Sent: June-26-17 4:34 PM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal – sure, I am available and in my office.

Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:23 PM
To: Bruno Amara
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks very much for this Bruno – I'll send you over a finalized package of everything once Carolyn approves it.

Toby also, just a heads up – there is one outstanding substantive change that OPG has come back with. Do you have a few minutes to discuss before end of day?

Please let me know.

Thanks,

Harkamal

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-26-17 4:18 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

See attached proposed edits. I don't believe they are substantive.

Thanks
Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 3:45 PM

To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno – just following up – do you have any comments on this as I will need to send to Carolyn before 5.

Many thanks,

Harkamal

From: Multani, Harkamal (ENERGY)
Sent: June-26-17 10:46 AM
To: 'Bruno Amara'
Cc: 'Salman Qadir'; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

As discussed Friday, here is the cover memo. Could you please review and let me know if you have any comments on this by this afternoon? I've tried to address all of the items OFA had requested be addressed in this.

I am hoping to send you an updated draft of the entire s.28 package later this afternoon.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 10:43 AM
To: Kim, John (OFA)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)

Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca

Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He; Salman Qadir
Subject: RE: OPG/IESO indemnity Responses to OFA Questions
Date: Tuesday, June 27, 2017 10:48:21 AM

Ron

We can get back to them to see if they can revise. As I re-read revised note, risk is low with respect to directors etc, and medium with respect to corporation.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 10:08 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Please share with OPCD / TBS.

Also, is there more on why the wording with respect to reasonable due diligence?

And should the "low" assessment in the TB AN from the weekend be revised, as previously marked?

Thanks,
Ron

On Jun 27, 2017, at 9:28 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> Attached for your review is the draft briefing note that we have been working on with MoF Legal. I also want to share back with OPCD on a statement regarding their check with OPG and IESO on accounting treatment. As is the statement is 2nd hand from Energy.
>
> Thanks
> Bruno
>
> ---
>
> **From:** Bruno Amara
> **Sent:** Tuesday, June 27, 2017 9:25 AM
> **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>;

Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>

> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily

directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>

> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>

> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal

>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03_clean.docx>

From:	Gavin He
To:	Ronald Kwan
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	RE: OPG/IESO indemnity Responses to OFA Questions
Date:	Wednesday, June 28, 2017 3:52:49 PM
Attachments:	OFHP_GA - OPG IESO Indemnities - FAA s28 - June27- BN_v05_clean.docx Ministry of Energy s28 request - response letter_v4.doc

Hi Ron,

We made a few minor edits to the BN and the response letter (updated the letter template). Attached is the updated version.

Thanks,
Gavin He

From: Gavin He
Sent: Wednesday, June 28, 2017 3:03 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Ron,

Please find attached the final package for your approval. I will bring you the hard copy of the package for your signature.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 1:25 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks Bruno.

Ron

From: Bruno Amara
Sent: June-28-17 11:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron/John

There are a couple of final edits from Legal in attached, to clarify scope of the indemnity. I'm attaching for your review.

Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Wednesday, June 28, 2017 11:01 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached some more comments that I hope reflect the most recent discussions.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 28, 2017 9:08 AM
To: Hanslep, Malle (MOF)
Cc: He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Malle,

That paragraph was my attempt to summarize paragraphs 1 and 2 from the OPG Agreement. In particular 2 below. But I wasn't providing any value-added in terms of interpreting paragraph 2, and I wasn't making the connection to the waiver. I'm happy to take your advice on the wording.

> 2. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, provided that, for clarity, any such financing entities' respective directors, officers, trustees, and/or employees shall be considered "Protected Persons" if he or she is also a director, officer or employee of the Corporation or any of the Corporation's subsidiaries.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 6:33 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

I reviewed the briefing note and have a question regarding the description of scope of indemnity in the first paragraph and on p. 2 – who the indemnity applies to. The complication is the activities of the OPG directors, officers and employees when they at the request of OPG undertake another activity in the implementation of the OFHP and in particular respecting OPG's role as Financial Services manager on behalf of the financing entity if it's a trust. This is explained on p. 8 of Energy's business case and of course is mentioned expressly in the OPG indemnity. It doesn't really seem that these individuals would be appointed as directors, officers and employees of the financing entity trust but it's possible. Maybe the language in these 2 paragraphs has been carefully written to cover these potential roles as it does mention "trustee" so that these individuals might be acting as a trustee of the financing entity in that case.

I wrote the below wording based on p. 8 so just send it for your consideration. I'm not sure if it's better or if you have specifically considered this point. I didn't mark up the note.
The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees. In the case of directors, officers and employees of OPG and its subsidiaries this could include where at the request of OPG, they undertake activities in another capacity in the implementation of the OFHP or OPG's role as Financial Services Manager of the financing entity, for example, signing documents on behalf of a financing entity that is a trust.

Also on p. 5 under Accounting Treatment, change MENE to Ministry of Energy.

Thank you.

Malle

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 5:18 PM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: He, Gavin (OFA)
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi

If you are still making edits to the briefing note you can send them along but for now, attached is a

markup and clean version with Toby's edits, IESO agent references removed and a couple of other minor edits. We will have approval package for sign-off tomorrow.

Thanks
Bruno

From: Bruno Amara
Sent: Tuesday, June 27, 2017 4:35 PM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

HI Malle

Sorry, just to clarify, are you still providing comments/edits to Toby's copy, or was that your edit which we can make.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:11 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I don't' think the indemnity covers IESO agents any more based on the last draft I saw.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 4:10 PM
To: Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK, we have a couple of minor edits but will wait for your copy.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, June 27, 2017 4:08 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Yes I think I may have a few comments and will follow up using Toby's mark-up as a base.

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 3:48 PM
To: Bruno Amara
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno – I have made some further edits to the BN reflecting our discussion. Malle is still reviewing and may have some more comments.

Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 27, 2017 9:25 AM
To: Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby

I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.

Thanks
Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM

> To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>

> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is

okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated

set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"), and its subsidiaries (excluding a subsidiary that is a financing entity) and the Independent Electricity System Operator ("IESO") with respect to their roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities, and, directors, officers, trustees and/or employees of a financing entity, if he or she is also a director, officer or employee of OPG or one of its subsidiaries.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

RECOMMENDATION

- It is recommended that the Minister of Finance approve, pursuant to Section 28 of the FAA, the Ministry of Energy's request to provide indemnities and waivers, on behalf of the Crown, in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) in the forms requested (the "Indemnity Agreements" and individually an "Indemnity Agreement".
- IESO and OPG have stated that without these indemnities and waivers they will not be able to participate in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.

WHAT IS THE MINISTER BEING ASKED TO SIGN?

The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Glenn Thibeault, Minister of Energy.

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out why indemnities are being sought, who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Why are indemnities being sought?

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the OFHP.

Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandates. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith" (see Appendix A for details on potential risks and Appendix B for details on limitations to existing protections to IESO, OPG and directors, officers and employees).

Who the Indemnity Applies to

The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees.

In the case of directors, officers and employees of OPG and its subsidiaries, they could also be indemnified for activities undertaken on behalf of an entity that is not included in the definition of Protected Persons where they are doing so in the implementation of the OFHP or for OPG's role as Financial Services Manager of a financing entity, for example, signing documents on behalf of a financing entity that is a trust at the request of OPG or acting as directors, officers or employees of entities that are carved out of the Indemnity Agreement, where they are doing so in the implementation of the OFHP and are also a director, officer or employee of OPG or any of OPG's subsidiaries.

What Indemnities are being provided?

Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim that relates to any act or omission that the Protected Person undertakes in relationship to the Fair Hydro Plan.

The Protected Persons are indemnified for regular and punitive as well as a broad range of other types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for the Protected Persons in defending themselves against a claim. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

The Indemnity Agreements provide that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity. The indemnities provided in the Indemnity Agreements also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Scope of liability in the indemnities

The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnities contained therein to the extent that the losses are already covered by an insurance policy or another indemnity (though to the extent that the Protected Person makes a claim on an indemnity that creates a loss for another Protected Person, such as OPG and its subsidiaries and the IESO, such other Protected Person may make a claim under an Indemnity Agreement). The indemnities provided in the Indemnity Agreement also apply where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

The indemnities contained in the Indemnity Agreement do not apply where the loss relates to the gross negligence or wilful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or wilful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.

Waiver of claim provision

The waiver of claims provision provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

The waiver of claims provision does not apply to claims for wilful misconduct, dishonesty or gross negligence.

Notification of Claims

The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

Provincial Warranty

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

KEY CONSIDERATIONS AND RISKS

The Indemnity Agreements give an indemnity for a broader range of actions than those that are usually given to indemnitees of the Province, specifically by giving an indemnity for actions that are not in the best interest of the corporation and may not be in good faith;

The Indemnity Agreements extend to the OPG and the IESO as corporations, beyond the more normal practice of indemnifying directors, officers and employees; and also extends to subsidiaries of the OPG, excluding financing entities under the OFHP Act.

The Indemnity Agreements include a waiver of claims with respect to indemnitees who are individuals by the Province as shareholder, meaning that except for gross negligence, dishonesty and wilful misconduct, the Province cannot bring an action against an indemnified individual.

Potential Fiscal Impact

The Ministry of Energy states that the risk of the Province providing the Indemnity Agreements is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. The Ministry of Energy notes, however, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG,

(see further discussion below), pre-existing protection for director and officers under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Because the Indemnity Agreements are not capped the Provincial exposure is not limited and will extend to the extent of any claim that is covered by the Indemnity Agreements.

The Ministry of Energy notes that in the event that an indemnity claim does arise and a payment is required, the Ministry would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Accounting Treatment

There is a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

OPCD has confirmed that OPG has received advice that the accounting treatment will be consistent with the GA Financing Structure. IESO is expected to also confirm the same.

The Minister of Energy had initially considered limiting the indemnities to directors and officers. However, IESO and OPG both have indicated that they require their respective indemnity cover their corporations as well (and in the case of OPG, its subsidiaries) given the nature of the risks they face.

Previous Direction on Indemnity for IESO and OPG

There is no existing specific Cabinet direction for the Ministry of Energy to provide the requested Indemnities to IESO and OPG.

Insofar as IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP, providing the requested indemnities will support implementation of the Fair Hydro Plan.

The Treasury Board Assessment Note of June 13, 2017, included reference to the indemnities required by OPG and IESO.

Other protections and assurances are currently being discussed under a *Provincial Support Agreement* that would include indemnities for the Financing Entity against claims from creditors as a result of government amending or repealing the Act or court rulings adversely affecting the rights and interest of the Financing Entity and performance assurances from the Province for the IESO and electricity vendors.

DESCRIPTION OF RISK AND RISK MITIGATION

The ONFHP is a novel program, and as a financing structure it is the first of its kind in Canada. Because the work to be undertaken by OPG (and OPG's subsidiaries where applicable) and IESO in carrying out their roles in implementing the ONFHP will fall outside of the usual operations/business risk that these corporations face, there is a risk that these corporations may be subject to increased liability specifically due to their roles with the ONFHP. This risk arises in part because of the kind of market that OPG, and IESO indirectly, are to participate in, and the steps that investors could take to protect their investments (see further details on risks in Appendix A).

The exact nature and scope of the risk to the Province of giving the Indemnities is undeterminable at this time, but the risk of liability for the Province arising may be low, with respect to directors, officers and employees, as any such risk may be mitigated by the following factors:

- In the case of the IESO, the existence of a statutory immunity under subsection 19(1) of the *Electricity Act, 1998* may mitigate against a liability arising against its directors, officers and employees, but does not eliminate such risk.
- In the case of OPG, the proposed statutory immunity under subsection 39(1) of the *Act* may mitigate against a liability arising against its employees, but does not eliminate such risk.
- The Indemnities are limited to claims arising in relation to the Protected Persons' respective roles in relation to implementing the ONFHP.
- The Indemnities do not apply with respect to Losses for which coverage is provided under insurance, to the extent already paid under such insurance.
- The Indemnities do not apply to Losses that are a result of the Protected Person's dishonesty, gross negligence or wilful misconduct.

Although there is a provision in the Indemnity Agreements that provides that a claim relating to the OFHP should initially be made on any indemnity that is already in place from the IESO or OPG for the benefit of their respective directors, officers or employees before making a claim on the Province's indemnity, if the IESO or OPG suffer a loss because they have indemnified such director, officer or employee they would be able to make a claim under an Indemnity Agreement. Thus, the Province would, to the extent such a claim was not covered by an insurance policy, be liable for such a loss of the IESO or OPG.

With respect to the corporations themselves (and in the case of OPG, its Subsidiaries as well) the risk may be higher, but is undeterminable at this time. The likelihood of risk to the Province is characterized as medium, given that OPG and IESO have not identified any insurance or indemnities that would cover the corporations themselves (or in the case of OPG, the Subsidiaries themselves) in the event that such liability arises, nor is statutory protection provided for the corporations themselves.

BACKGROUND

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.

Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:

IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.

OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.

The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.

Prepared by: Corporate and Electricity Finance Division, OFA / Legal Services Branch, Ministry of Finance
With inputs from: Office of Provincial Controller Division, Treasury Board Secretariat, Ministry of Energy

June 28, 2017

APPENDIX A

Potential Risks Related to OPG/IESO Roles in Implementing the Ontario Fair Hydro Plan

OPG – Role in Implementation of ONFHP and Associated Risks

The *Electricity Act, 1998* ("EA") has been amended to contemplate that OPG's objects include those related to the ONFHP. This amendment was designed to ensure that OPG could participate in the ONFHP. OPG will play a central role in the implementation of the ONFHP, particularly with respect to the implementation of the GA refinancing component of the ONFHP. As part of the ONFHP, it was announced that a portion of the GA will be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). This would result in a deferred GA amount that a special purpose entity created by OPG (i.e. a financing entity as defined in the *Act*) is expected to finance.

In carrying out this role, OPG will be carrying out activities that fall outside of its typical business activities and corporate mandate relating to power generation. As a result, OPG, its directors, officers, and employees may be faced with increased risk of liability. Examples of such risks related to financing, include without limitation:

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws);
- secondary market liability under Canadian and/or other applicable securities laws;
- liability the signatories to the prospectuses will have (i.e., the individuals signing the prospectus); and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

OPG and its Subsidiaries, and their respective directors, officers, employees may also be faced with risk of liability to:

- underwriters/agents selling debt securities of the financing entities
- the purchasers of debt securities of the financing entities (both initial purchasers and subsequent purchasers of the debt securities in the secondary markets)
- counterparties to agreements (e.g. the trustee of a financing entity that is a trust or IESO)
- other stakeholders (the Province, as shareholder of OPG, pensioners, and employees) of OPG if OPG (or any Subsidiary of it) is liable for any claim or obligation and cannot meet its obligations to these stakeholders as a result of such claims.
- Regulators (e.g. the Ontario Securities Commission)

- Parties who may challenge the *Act* or any component of it and include OPG as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect OPG, its Subsidiaries and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate OPG and OPG's Subsidiaries in undertaking their role with respect to the implementation of the ONFHP.

IESO – *Role in Implementation of ONFHP and Associated Risks*

The *Act* also imposes certain obligations and requirements on the IESO to carry out various activities in relation to the implementation of the ONFHP such as the deferral of costs related to the GA, the creation of a regulatory asset in relation to the GA financing component of the ONFHP, the conveyance of that asset to OPG's financing entities and providing a servicing role in recovering OPG's funding costs from future ratepayers. The IESO may also be required to play a role in potential securities offerings of OPG's financing entities. If so, this may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. The IESO has expressed concern that all of this drives an increased risk of liability to the IESO, its directors, officers and employees, which is over and above typical operations risks and arises solely due to the ONFHP.

Other examples of sources/activities giving rise to increased risk of liability for the IESO, its directors, officers and employees include the following:

- Investors in any ONFHP investments or underwriters and banks regarding the offering of the investment asset to investors, as well as any securities prospectus or underwriting arrangements, with the IESO named and/or IESO being involved;
- OPG (or the financing entity) in relation to the commercial arrangements regarding transfer of the regulatory asset and servicing of the investment asset, and related activities;
- Market participants, program participants for issues in liquidity (e.g. short pay);
- Taxation authorities where prior approval of IESO's treatment is not approved by taxation authorities;
- Securities commissions regulators (U.S./Canada); and
- Parties who may challenge the *Act* or any component of it and include the IESO as a party to such challenge.

As a result, pre-existing indemnities and protections do not adequately protect IESO and each of their respective directors, officers and employees as explained further below.

Providing the requested Indemnity would help facilitate the IESO's undertaking of the activities requested by the Province in order to facilitate the implementation of the ONFHP.

APPENDIX B

Why Indemnities are being sought and limitations to protection under statutory protections and/or Insurance

Indemnities are required to facilitate IESO and OPG in carrying out their respective roles in implementing the ONFHP

The provision of the Indemnities is required in order to facilitate the implementation of the ONFHP. Both OPG and the IESO are required to carry out activities that may fall outside the scope of their typical business activities and corporate mandate. As a result, these activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG, OPG's Subsidiaries, IESO, and their respective directors, officers and employees to increased liability.

Even if the corporate mandates of OPG and the IESO were updated to include their role in implementing the ONFHP, this may not eliminate the risk of the types of liabilities outlined above completely, particularly due to the novelty of the ONFHP and the types of roles that OPG and IESO will be taking on. For example, persons could still challenge the *Act* or any component of it and include OPG or the IESO as a party to such challenge.

While statutory protection from liability is provided to IESO's directors, officers and employees, and to OPG's employees these protections are limited to "good faith acts". Therefore, the statutory protections do not preclude persons from bringing a claim against the Protected Persons (as defined in the Indemnities) in relation to these activities on the grounds of "bad faith". Generally speaking the Indemnities are intended to provide the Protected Persons with indemnification for losses/liabilities, including those for potentially "bad faith acts", unless any such acts arise as a result of the Protected Persons' dishonesty, gross negligence, or wilful misconduct. As described below in subsection (ii), the statutory protections also do not indemnify for costs relating to defending a claim. The statutory protections also do not extend to the corporations themselves.

Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the ONFHP. Providing the requested Indemnities will provide OPG, OPG's Subsidiaries, the IESO and each of their respective directors, officers and employees with assurance against liability in order to allow them to comprehensively carry out their respective roles in the successful implementation of the ONFHP.

Statutory Immunity does not preclude a person from bringing an action or other civil proceeding

Subsection 19(1) of the *Electricity Act, 1998* provides IESO directors, officers and employees with the following protection from liability:

"No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

The *Electricity Act, 1998* does not contain a similar statutory immunity for OPG's directors, officers, employees or agents. However, under subsection 39(1) of the *Act*, a statutory immunity is provided to the OPG's employees. This provision states:

"No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under the Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Subsection 39(2) of the Act provides that nothing in subsection 39(1) limits the effect of subsection 19(1) of the *Electricity Act, 1998.*

The statutory immunities provided under the *Electricity Act, 1998* and the *Act* prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith").

The immunity from suit provisions outlined above, are qualified by the words "for any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act…" This is a question of fact that needs to be considered by a court of competent jurisdiction. As such, statutory immunity would not necessarily be a bar to litigation and does not ensure that the IESO's and OPG's employees, officer or directors (as applicable) would not become embroiled in litigation.

In the case of OPG, there is no similar statutory immunity explicitly provided for its directors, or officers so the risk of litigation is greater for these individuals.

For the reasons mentioned above, the Indemnities requested under this application would ensure that if a claim is brought against the Protected Persons as a result of carrying out their roles in implementing the ONFHP, they are fully protected for any costs, losses etc. subject to the limitations provided for in the Indemnities.

Insurance and indemnities that the IESO and OPG currently provide to its directors, officers and employees may not fully cover risk

OPG –Insurance and Indemnities

Currently, OPG has indicated that it maintains Directors and Officers liability insurance ("D&O Insurance") with limits of USD $110 Million. The D&O Insurance includes persona coverage (side A) and corporate reimbursement coverage (side B). Under the side A coverage, OPG has advised that the policy pays losses where the organization is either not permitted by law or unable due to insolvency to indemnify the insured person under the policy (includes directors, officers and designated executives). This includes losses arising from a claim made during the policy period for a wrongful act (e.g. breach of duty, neglect, error, misstatement or omission) of such insured person. The full $110 Million limit is available for side A coverage.

Under side B coverage, OPG has advised that the policy reimburses the organization for losses incurred to indemnify an insured person under a D&O claim. The coverage is up to a maximum of USD $75 million, less the corporate deductible of $500,000.

OPG has advised that directors and officers have priority of payments over the organization for the entire $110M limit.

While this insurance provides coverage for directors and officers of OPG, there is no similar coverage provided for OPG's employees. Further, any liability stated over the maximum amounts would not be covered by the insurance policy. Pursuant to section 2(a) of the IESO Indemnity and section 3(a) of the OPG Indemnity, a Protected Person shall not be entitled to indemnification to the extent that coverage is provided under an insurance policy and such Protected Person is actually paid under such insurance policy.

OPG has indicated that they provide their directors an indemnity but not to their directors or employees. OPG has not provided information about the scope of this indemnity. However, the Indemnities provide that a Protected Person shall not be entitled to indemnification to the extent that other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified. This language is meant to ensure that the covered losses under the Indemnities will be covered by other applicable indemnities first, before being covered by this indemnity.

OPG has not provided any information about insurance coverage and indemnities that its subsidiaries provide to their directors, officers and employees.

IESO – Insurance and Indemnities

The IESO has informed that it carries Directors & Officers insurance providing a maximum $15 million limit and $200,000 retention per claim. Employees are also included in the definition of Individual Insureds. The IESO also carries Professional liability insurance providing a maximum $75 million limit.

Aside from indemnification arising by operation of common law for employees acting within the scope of their employment, the IESO has informed that it has provided formal indemnity as follows:

- IESO has provided an indemnity to its board members.
- There is an indemnity provided to members of the Society of Energy Professionals pursuant to their collective agreement, whose members form a subset of all employees at the IESO.

Existing Indemnities to OPG and IESO from the Province

Existing indemnities previously provided by the Province to OPG have been limited to specific directives provided to OPG by the Province (e.g., in connection with the Bruce Lease). Accordingly, the scope of the existing indemnities provided by the Province would not cover the ONFHP. We are not aware of any indemnities provided to the IESO by the Province.

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the Financial Administration Act of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the Financial Administration Act, of the Indemnity Agreements for OPG and the IESO in order to allow them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Thank you again for writing.

Sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim
Subject: RE: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 12:26:17 PM
Attachments: MOF Leagl Explanation of s22 and s28 etc.docx
OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx

Hi Ron

James had suggested a s22 in which case any indemnity payments would be made under s12 of FAA (allows for indemnity payment from CRF). But I don't think a current appropriation was required in the s22 / s12 option. The potential appropriation discussion in that not was a bit confusing as it seemed to tie the amount to deferral amounts. I'm not sure that they are necessarily directly related. (But this is one of the points of clarification we have requested form OPG/IESO through Energy legal)

MoF Legal was fairly clear in their opinion that this had to be under s.28 - assuming agreement that this should be a Minister of Energy rather than Minister of Finance request. And they are of the opinion that approval for appropriation is requested if an indemnity is called upon. (attached fyi is some explanation that Legal provided to us).

As noted earlier, I revised the draft note (attached) to make explicit this assumption and I will request specific review of this by TBS (I'll resend to Legal as well). We are also sharing with OPCD re: accounting concerns, FTD/CMD mainly to keep them in the loop on the indemnity discussions given the other discussions e.g. provincial guarantee, PiLs exemption.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 12:00 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Thanks Bruno.

James' draft note from May had cited an FAA requirement. Is that not actually a requirement in this instance?

Ron

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division

Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF)

<Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list.

Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

IESO/OPG Indemnities

Questions

1. Re: June 02 email form Harkamal Multani. OPG proposed revisions to waiver and Section 2(c). The latter refers to the proposed Indemnity Agreement. In what document is the "waiver"?
   RESPONSE: Waiver is in section 6 of the proposed Indemnity Agreement.
2. What is the difference between s. 22 and s. 28 of the FAA?
   RESPONSE: There is not a choice to be made between using s. 22 and s. 28 of the FAA. They are different sections used for different purposes.
   FAA s. 28 requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario. Approval must be requested before the transaction is entered into and before any request is made to seek an approval from the LGIC (OIC) to authorize the transaction if an OIC is required to authorize the transaction. In some cases, ministries and public entities are required to obtain an OIC to authorize the borrowing of money or giving of guarantees. So an approval under s. 28 is required whether or not the indemnity is authorized by a statutory section or not. The purpose of s. 28 is to ensure that indemnities given by other ministries and public entities are approved centrally in order to monitor the fiscal plan, etc.
   Under s. 22 of the FAA, the LGIC may authorize the Minister of Finance to guarantee or indemnify the debts, obligations, securities or undertakings of any person. The OIC may fix the terms or authorize the Minister of Finance to fix the terms subject to any maximum liability specified in the OIC.
   Section 12 of the FAA is also a relevant section because it says any amount required to be paid by the Crown by the terms of a guarantee or indemnity given pursuant to a statute may be paid by the Minister of Finance from the CRF. This section creates a statutory appropriation for payments from the CRF for guarantees that are authorized in statutes. This includes guarantees authorized by OIC under s. 22 of the FAA but there are also other statutory guarantee sections.
   Do not think that currently there are any indemnities of directors/officers of Crown agencies that have been authorized by an OIC under s. 22 of the FAA. The risk of the requested indemnity is considered indeterminable in the business case. If the indemnity is called upon, shouldn't it be paid out of voted appropriation of the Ministry of Energy, rather than create a statutory charge for a vague and undeterminable liability? Section 22 OIC's normally cap the maximum liability of the Province and this could not be done. If done under s. 22 of the FAA, it would be the Minister of Finance, not the Minister of Energy that is providing the indemnity . The only implication of this is that the Minister of Finance implicitly also approves under s. 28 at the same time he is giving the guarantee.

Are there implications for what approvals are needed?

- Implications for which ministry (TBS/MoF) leads the indemnity request?
- Does s.22 vs s.28 depends on which Minister is providing indemnity and to whom?

3. What documentation is required for approval of indemnities?
   RESPONSE: The normal s. 28 approval process would be followed. Ultimately the Minister of Finance would be asked to sign a section 28 approval for the indemnity so the indemnity agreement would be attached to the approval form.

4. Are there specific examples of things OPG/IESO or its directors may become liable for?
   - i.e., acting in bad faith examples.
   - Does indemnity cover anything else other than acting in bad faith?
     i. Request Approval note points out that Electricity Act already protects IESO and certain persons against civil proceedings if they act in good faith. Bill 132 has similar language for OPG s. 39(1), albeit but just for the corp.
   - Suggestion that exposure is tied to SPV debt offering, but does this mean it is limited by the amount of debt offering? Or might liability, loss etc. not necessarily linked directly to debt offering amounts?

   RESPONSE: These are questions for the Ministry of Energy. We also had a few questions in the note we sent. The scope of the indemnity requested is very broad to cover all activities done in implementation of Fair Hydro Plan.

5. Should there be a future payment of an indemnity it would be made under s. 12 of FAA. (TBS note)
   - What does s.12 relate to S. 11.3 regarding "no agreement entered into without appropriation"?
   - How can there be an appropriation if, as not states, indemnities are undeterminable at this time and cannot be quantified?

   RESPONSE: If indemnity is called upon, payments should be made by Ministry of Energy out of voted appropriation. Normally these sorts of indemnity are not authorized under s. 22 of the FAA to create a statutory charge. If there were a statutory appropriation already (such as for a s. 22 OIC), then the requirement in s. 11.3 would already have been satisfied because appropriations can be voted or statutory. Ministry of Energy may need to obtain supplementary estimates at a future time if called upon to pay under the indemnity. Section 11.3 refers to "no agreement shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation." Therefore, is it expected that the Ministry of Energy will be paying under this indemnity in this fiscal year? Also, please note 11.3(2) that it is a condition of every contract that payment of moneys is subject to

an appropriation to which that payment can be charged being available in the fiscal year in which the payment becomes due.

6. And related to inability to quantify – how is fiscal risk handled?

7. Does OPG and directors indemnity include SPV?
    - Or does SPV require indemnity?

RESPONSE: Agree that this is a question.

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

Formatted: Highlight

- The Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.
- The Ministry of Energy indicates both OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").
- In addition, statutory protections do not indemnify for costs relating to defending a claim.

Commented [A1]: Would Energy think it fair to add this wording to its business case?

RECOMMENDATION

- IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

Commented [A2]: This is placeholder language. TBD/TBC

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- The fiscal impact of a future indemnity claim is unknown. Ministry of Energy ("MENE") states that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
- An appropriation for the contingent liability is not required by the Ministry of Energy at this time.
- An approval would be required for a voted appropriation for the Ministry of Energy to make payments if indemnity was called upon.
- MENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

Formatted: Highlight

Commented [A3]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Whereas the contingent liability table says it is low.
Can we have MENE to put this right up front. Need a bit of a narrative – what we [Energy] believe and why.

Formatted: Highlight

Commented [BA4]: We need to make clear what this means. Is it meaningful to claim to be responsible for funding if amount is unknown? And bullets above note ministry would need an approval for an appropriation. (This could include no approval and instruction to manage).

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Who the Indemnity Applies to

- The indemnity is being given in favour of "Protected Persons" which comprises OPG, each of OPG's subsidiaries [NTD: We have not received confirmation of whether the financing entity is a subsidiary of OPG] and each of their respective directors, officers and employees.

- Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim, including a broad range of types of damages. This also includes punitive and a broad range of types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for defending themselves. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

What indemnities are being provided?

- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

- The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

The Indemnity Agreement includes a waiver of claim provision, which is not a normal provision for an indemnity agreement.

- This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan. This does not apply to claims for willful misconduct, dishonesty or gross negligence.

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

ANALYSIS

Commented [A5]: s.28 notes usually talk about mitigation, as does the contingent liability table. Anything we can add here?

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from all claims, liabilities, costs, losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals in relation to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHP (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or a subsidiary).

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase of the deferred assets ("regulatory assets") under the Global Adjustment ("GA").

Commented [A6]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A7R6]: Comments from MOF Legal:

Even if Board has indemnities from OPG, wouldn't be able to cover as is not in the best interest of corporation.

MOF Legal: up to Energy to tell us. OPG must have given Board members the normal indemnities.

Bruce Lease one covers the not in the best interest of corporation.

OBCA indemnity: immunity from suit. May indemnity corp. directors and officers. Limited to indemnity in good faith. Other specific provisions exist in EA and FHA.

IESO covers quite a bit. Including Board, directors, employees.

MENE states that the OFHP Act activities of both OPG and the IESO would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Commented [A8]: Fair to insert?

Commented [A9]: Would Energy change this to "historical" in its business case?

Commented [A10R9]: MOF Legal: OPG Board appears to be concerned some would say not in good faith despite objects being changed.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could affect OPG and IESO's willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Commented [A11]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A12R11]: IESO is indirectly involved. Not clear EA 19(1) for IESO. Unclear whether it'd protect from US suit. OFA Board also raised. MOF Legal: this is a valid point.

Commented [A13]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are requesting to be indemnified for their activities that may be found to have not been conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected to carry out activities under the OFHP that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability.

- The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation.

  - Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?
- Statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees".
  - Since OPG is falls under Ontario's *Business Corporations Act* (OBCA), directors and officers of OPG are subject to the standard set out in that Act which includes a limitation on indemnities from corporations, whereby indemnities can only be given to the extent that the directors and officers carried out their activities in good faith and in the best interest of the corporation. The proposed Provincial indemnity, however, would not be restricted to that standard.
  - The standard applicable to directors of IESO is set out in s. 12 of the *Electricity Act, 1988*, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
  - So the standard is similar for both OPG and IESO directors.

Commented [A14]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

  "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

  "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Commented [BA15]: Does this mean
- employee of the Province or employee of OPG, or
- employee of the Province or OPG (i.e., the corporation itself)?

2. Potential for Fiscal Exposure of the OFHP Act

In addition to the potential fiscal impact due to a call on the indemnity, there may be a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and

the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

Commented [A16]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

Commented [A17]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.
- Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:
  - IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.
  - OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- The government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

DRAFT

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim
Subject: RE: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 11:59:51 AM

Thanks Bruno.

James' draft note from May had cited an FAA requirement. Is that not actually a requirement in this instance?

Ron

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with

Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>

Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message

together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain

information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald.Kwan@ofina.on.ca
To:	Bruno Amara
Cc:	John Kim
Subject:	RE: OPG/IESO indemnity
Date:	Tuesday, June 13, 2017 11:05:16 AM

Thanks Bruno.

James' draft note cited, I thought, a requirement under the FAA for an

---

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would

cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara

Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out

the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]

Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

To:	Bruno Amara
Cc:	John Kim
Subject:	RE: OPG/IESO indemnity
Date:	Tuesday, June 13, 2017 11:03:21 AM

Thanks Bruno.

James' draft note cited

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would

cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara

Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out

the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]

Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim
Subject: RE: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 10:59:03 AM

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]

Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin

(MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim; Bruno Amara
Subject: RE: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 10:32:40 AM

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can

have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)

Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel

Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)

Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim
Subject: RE: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 12:55:11 PM

Hi Ron

Energy had requested s28. And Yes, James had suggested a s22. It wasn't totally clear why but TBS they seemed concerned about Sections 11.3(1) of the FAA which states that no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation. TBS noted that the potential amount was undetermined and therefore not clear that Energy would have expense room if indemnity called upon. So they suggested the alternate s22, s12. And then they decided they weren't dealing with the request.

We asked MoF Legal for their opinion. Wrt. to s11.3, MoF legal noted, that there is no indication that Energy is paying an indemnity this fiscal so no indication that it will be in excess of appropriation.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 12:31 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: Re: OPG/IESO indemnity

Hi,

I thought his note had landed on the s.22 option after stating that a s.28 option would require an appropriation being in place. But I may be mis-remembering. And it was only a draft, and may not have been a formal And final analysis.

Ron

On Jun 13, 2017, at 12:26 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> James had suggested a s22 in which case any indemnity payments would be made under s12 of FAA (allows for indemnity payment from CRF). But I don't think a current

appropriation was required in the s22 / s12 option. The potential appropriation discussion in that not was a bit confusing as it seemed to tie the amount to deferral amounts. I'm not sure that they are necessarily directly related. (But this is one of the points of clarification we have requested form OPG/IESO through Energy legal)

MoF Legal was fairly clear in their opinion that this had to be under s.28 - assuming agreement that this should be a Minister of Energy rather than Minister of Finance request. And they are of the opinion that approval for appropriation is requested if an indemnity is called upon. (attached fyi is some explanation that Legal provided to us).

As noted earlier, I revised the draft note (attached) to make explicit this assumption and I will request specific review of this by TBS (I'll resend to Legal as well). We are also sharing with OPCD re: accounting concerns, FTD/CMD mainly to keep them in the loop on the indemnity discussions given the other discussions e.g. provincial guarantee, PiLs exemption.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 12:00 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Thanks Bruno.

James' draft note from May had cited an FAA requirement. Is that not actually a requirement in this instance?

Ron

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of

mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]

Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>

Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489

Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<MOF Leagl Explanation of s22 and s28 etc.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx>

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	RE: Outstanding Business Issues Ontario Fair Hydro Plan
Date:	Tuesday, May 30, 2017 8:05:35 PM
Attachments:	1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v8.doc

Hi Scott,

Separately, staff have also been working on the LRC approval form for an OIC to enable the OFA to meet the IESO's request for an expanded credit facility.

Comments welcome, though noting that we were told that DMO and CO want this ASAP (meaning today!).

Ron

From: Ronald Kwan
Sent: May-30-17 7:44 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Subject: RE: Outstanding Business Issues Ontario Fair Hydro Plan

Thanks Scott. I'll take a look.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: May-30-17 6:13 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Outstanding Business Issues Ontario Fair Hydro Plan

Fyi – here is a document that we have pulled together for Thursday's discussion. I think Kaitlin has also shared with colleagues at OFA for review. I shared with John at OPG and he asked that we include a few bullets on the sub debt term sheet in development between OPG and OFA. We plan to add that in.

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans ["including"?] under credit facilities requested by the Independent Electricity System Operator ("IESO"). This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan. The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.
- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.
- However, there is expected to be initial and potential ongoing 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*. The $2 billion request from IESO is based on current data and assumptions which could change.

- It is proposed that the OIC authorization be $2.0 billion [to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

- For the OFA to accommodate this request, the OFA requires additional borrowing authority from the Minister of Finance to ensure that it has sufficient funds to lend, hence the current request for an OIC.

- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $x billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Ronald Kwan
To:	Scott Nelms (ENERGY)
Subject:	RE: Outstanding Business Issues Ontario Fair Hydro Plan
Date:	Tuesday, May 30, 2017 7:44:11 PM

Thanks Scott. I'll take a look.

Ron

From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: May-30-17 6:13 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Outstanding Business Issues Ontario Fair Hydro Plan

Fyi – here is a document that we have pulled together for Thursday's discussion. I think Kaitlin has also shared with colleagues at OFA for review. I shared with John at OPG and he asked that we include a few bullets on the sub debt term sheet in development between OPG and OFA. We plan to add that in.

From: Ronald Kwan
To: Scott Nelms (ENERGY)
Cc: Steen Hume (CAB)
Subject: RE: Outstanding Business Issues Ontario Fair Hydro Plan
Date: Wednesday, May 31, 2017 9:33:52 AM
Attachments: 1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v9.doc

---

Hi Scott,

Looping in Steen for his comments as well, and noting that there were some copy edits vs the version you saw yesterday.

I'd note that the OIC itself does not mention the FHP, but simply provides the additional borrowing room for the OFA to accommodate IESO's request.

Ron

-----Original Message-----
From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
Sent: May-30-17 21:36
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Outstanding Business Issues Ontario Fair Hydro Plan

Thanks Ron. Took a quick skim. Looks good to me.

Sent with BlackBerry Work (www.blackberry.com)

From: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Date: Tuesday, May 30, 2017, 8:05 PM
To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: RE: Outstanding Business Issues Ontario Fair Hydro Plan

Hi Scott,

Separately, staff have also been working on the LRC approval form for an OIC to enable the OFA to meet the IESO's request for an expanded credit facility.

Comments welcome, though noting that we were told that DMO and CO want this ASAP (meaning today!).

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13188
EVista Tracking #: SUB-NAOIC-2017-01004

Ministry of Finance

Capital Investment Plan Act

Order in Council

Profile at a Glance

Priority: Consequential to Commitment
Public Interest: Low
Key Stakeholder Interest: Very high
New Costs/Burdens: Yes for Government
New Savings/Opportunities: Yes for Government

Proposed Items for Review

1. Approval of Order in Council ("OIC") under section 22 of the *Capital Investment Plan Act, 1993 ("CIPA"),* authorizing the Minister of Finance to make a loan to the Ontario Financing Authority ("OFA").

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC	LRC, June 27, 2017	June 27, 2017

Deputy Minister _____ Date _____

Minister _____ Date _____

s. 1 Proposal and Context

- Approval is being sought for an OIC under section 22 of *Capital Investment Plan Act, 1993* ("CIPA"), which will authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority ("OFA") in an amount of up to $2.0 billion. Under the proposed OIC, loan(s) could be advanced during the period between the effective date of the OIC and [December 31, 2047.

- Subsection 22(1) of CIPA authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC"). Subsection 22(2) provides a statutory appropriation for loans made by the Minister to the OFA under subsection 22(1).

- Existing OICs authorize the Minister of Finance to provide loans to the OFA under which the OFA has provided loans and credit facilities to colleges, school boards and other public agencies such as Infrastructure Ontario, IESO, Ontario Lottery and Gaming Corporation and Liquor Control Board of Ontario.

- This proposed OIC is required to expand the overall Minister of Finance lending authority to the OFA to allow the OFA to provide loans under credit facilities requested by the Independent Electricity System Operator ("IESO").
    - This will help the IESO to fulfil the commitments under the proposed Fair Hydro Act, 2017, under anticipated and potential timing differences in the implementation of the proposed Fair Hydro Plan.
    - The timing of this OIC is critical to ensure borrowing authority for the OFA is available to provide the IESO its requested financing arrangements upon the enactment of the proposed *Ontario Fair Hydro Plan Act, 2017.*

s. 2 Approach and Intended Outcomes

- Under CIPA, the OFA provides financing to public bodies as directed by the Minister of Finance. The OFA obtains the funds it needs for its lending program by borrowing from the Province. This OIC would authorize the Minister of Finance under section 22 of CIPA to provide additional loans to the OFA.

- As per subsection 3(1) of CIPA, the Minister of Finance is responsible for the administration of CIPA with respect to the OFA.

- This proposed OIC is required to assist in fulfilling the commitments under the proposed *Ontario Fair Hydro Plan Act, 2017.*

- It is expected that as part of the implementation of the proposed arrangements, the Minister of Finance will direct the OFA to provide a revolving credit facility for short term financing related to the on-going *Ontario Fair Hydro Plan Act, 2017*. In particular, the OFA would be directed to provide a credit facility to the Independent Electricity System Operator ("IESO"). The IESO is a public body for the purposes of CIPA.

- Under the proposed *Ontario Fair Hydro Plan Act, 2017,* the IESO would 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. Global Adjustment amounts initially collected will, therefore, be insufficient to fund the IESO's contractual obligations to electricity producers and service providers.

- The proposed *Ontario Fair Hydro Plan Act, 2017* allows the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell that asset.
    - 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 would be used by the IESO to fund the current Global Adjustment shortfall.

- However, there is expected to be initial and potential 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. Even once the SPV is set up to borrow, there may 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 potential monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

- IESO has requested that the OFA provide a revolving credit facility of up to $2 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.
- It is proposed that the OIC authorization be for $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requirements.

-
- If approved, the Minister of Finance will subsequently provide a Directive to the OFA to direct it to provide credit facilities to the IESO in an amount not to exceed $2.5 billion.
    - The OFA currently provides a credit facility to the IESO of $975 million.
    - The IESO has requested that the existing credit facility be reduced to $475 million, and a new credit facility be provided of $2 billion, for a total amount of $2.475 million.

s. 3 Direction and Urgency

- As announced on March 2, 2017, and highlighted as a commitment in Budget 2017, the Province intends to implement the *Ontario Fair Hydro Plan Act, 2017,* which would reduce electricity bills by 25 per cent on average for eligible households.
- The ability for the OFA to have the requisite borrowing and lending capacity is instrumental in supporting implementation of the proposed *Ontario Fair Hydro Plan Act, 2017*.
- Ministry of Energy proposed regulations under the proposed *Ontario Fair Hydro Plan Act, 2017* are expected to track for Cabinet approval by end of June 2017. It is expected that this OIC also be submitted for approval concurrently as it supports a crucial component of the successfully implementation of the Fair Hydro Plan.
- A related Cabinet Minute from the Ministry of Energy is tracking for June 27, 2017 date.

s. 4 Impact Assessment and Costs

- With this OIC, the Minister of Finance will be authorized to lend an additional amount of $2 billion to the OFA. Subject to the terms and conditions of a

Directive from the Minister of Finance, loans from the Minister of Finance to the OFA are expected to be at the Province's cost of funds.
- Loans advanced will result in increased borrowing in the debt markets by the Province.
- Loans are expected to be repaid and, therefore, no fiscal impact is expected.

s. 5 Implementation

- If the OIC is approved and signed, the Minister of Finance will have authorization to provide a loan to the OFA. A Directive from the Minister will be required that will provide direction to the OFA on how it can use the proceeds of the loan.

s. 6 Delivery and Results Tracking

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed *Ontario Fair Hydro Plan Act, 2017* and is required to ensure the timely implementation and support for the success of the Fair Hydro Plan.

s.7 Stakeholder Consultations

- As described in section 2 above, the requirement for this OIC is a result of the Province's proposed Fair Hydro Plan. The related Cabinet note for the initiative should be referred to.

s.8 Other Jurisdictions and Harmonization

- N/A

s. 9 Communications

- N/A

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Bruno Amara Snr Manager, Electricity Finance Branch Ontario Financing Authority	(416) 325-1489
Ministry Legal	Patrick Rundans Legal Counsel, Legal Services Branch Ministry of Finance	416-212-4538
Ministry Communications	N/A	N/A
Assistant or Deputy Minister's Office	Jonathan Tekle Policy Advisor Deputy Minister's Office	416-325-8736
Cabinet Office Policy	[name] [title] Cabinet Office	

Appendices

Appendix A: The Proposed OIC

From:	Ronald Kwan
To:	Bruno Amara
Cc:	Gavin He
Subject:	RE: Part 2 OFHP Regs - Draft Sub and RAN
Date:	Monday, June 26, 2017 7:24:24 AM
Attachments:	3 RAN OFHP Regulations Part 2 v1_EFBedit2.doc

Hi,

A few suggestions, as attached.

Thanks,
Ron

From: Bruno Amara
Sent: June-24-17 10:39 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Part 2 OFHP Regs - Draft Sub and RAN

Hi Ron

In RAN note pg 3, the IESO credit facility is discussed. I added the detailed explanation (slightly expanded version of explanation in powerpoint). But not sure if this is needed.

I note that in the RAN note and TB submission the credit facility discussion is in terms of "IESO is in discussion with OFA to do this" But hasn't the Minister already signed the OIC? But Agreement is still to come.

And a comment on some wording in the TB. The language has been that facility is for short- to medium-term financing, which includes the purpose below. May just be confusing that it is referred to as longer-term financing in the note. It may be semantics as I think they mead longer than short-ter.

Pg 14

IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

Bruno

From: Ronald Kwan
Sent: Saturday, June 24, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: Fwd: Part 2 OFHP Regs - Draft Sub and RAN

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
To: "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
Cc: "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
Subject: Part 2 OFHP Regs - Draft Sub and RAN

Hi,

Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early afternoon.

James

TREASURY BOARD / MANAGEMENT BOARD OF CABINET
REQUEST ASSESSMENT NOTE

Ministry:	Energy
Meeting Date:	June 27, 2017
Agenda Class:	Major Item
Last reviewed by: TB/MBC – June 13, 2017	**Tracking to: Fast Track** LRC/Cabinet – June 27, 2017

SUBMISSION TITLE:	Report back on Ontario Fair Hydro Plan – Regulations Part 2 of 2

I. DECISION BEFORE THE BOARD

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding Cabinet for approval

II. RECOMMENDATIONS:

• Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to for approval including: o Global Adjustment Refinancing; o Ontario Electricity Support Program (OESP)	*Receive*
Note key aspects and program parameters of the proposed regulations	*Note*
Recommend the proposed regulations proceed to Cabinet for approval	*Recommend*
• Direct the Ministry to report back to TB/MBC on: o Details of its overall strategy to substantially increase OESP enrolment (note: includes increasing Social Assistance clients enrolled in OESP).	*Direct*

III. FINANCIAL SUMMARY

$ Millions	**2017-18**	**2018-19**	**2019-20**
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base: Global Adjustment Refinancing*	0.0	0.0	0.0
Electricity social programs – OESP ^	140.0	261.0	325.0
Offset Recommended	0.0	0.0	0.0
Total Potential Fiscal Impact	0.0	0.0	0.0

*As part of Global Adjustment Refinancing, an Operating Asset for $1.1B for OPG Share Purchase was included as part of 2017 Budget.
^Multi-year appropriation approved as part of the 2017 Budget.

IV. KEY COMMENTS AND CONSIDERATIONS

In March 2017, the Ministry received Treasury Board/Management Board of Cabinet (TB/MBC) approval for electricity price mitigation measures that support a 25% electricity bill reduction on average (including the 8% Ontario Rebate For Electricity Consumers announced in 2016). The Ontario Fair Hydro Plan (OFHP) was announced on March 2, 2017.The plan includes refinancing a portion of the Global Adjustment (GA) and helping vulnerable electricity consumers ("social programs") amongst other initiatives for residential consumers (see Appendix C). The Ministry was directed to report back to TB/MBC on a number of items including the proposed legislation required to enact the initiatives under

OFHP (see Appendix D).

Report backs to date include:

- May 9th 2017, the Ministry provided an implementation update on the OFHP and the enabling legislation. TB/MBC recommended the proposed legislation proceed to Cabinet for approval and Ontario's *Fair Hydro Act, 2017* ("the Act") received Royal Assent on June 1, 2017. The Ministry was directed to report back to TB/MBC on a number of items including the proposed regulations required to support the implementation of the OFHP (see Appendix E).

- June 13, 2017, the Ministry provided the first of two updates on next steps in implementation of the OFHP, specifically providing the proposed regulations that would establish and amend the necessary regulations under the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, *Ontario Rebate for Electricity Consumers Act, 2016*, and the *Fair Hydro Plan Act, 2017*.

Proposed Regulations

The current submission before the Board is the second bundle of proposed regulations supporting implementation of the OFHP and would establish and amend regulations under the *Ontario Energy Board Act, 1998 and the Ontario Fair Hydro Plan Act, 2017*, related to GA Refinancing and the Ontario Electricity Support Program (OESP).

Implementation of Global Adjustment (GA) Refinancing

On March 2, 2017, as part of OFHP, the government announced that a portion of the GAs would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).

As Part 2 of the regulations report back (Part 1 was before the Board June 13, 2017), The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the GA by ensuring that the mechanisms for refinancing of GA as set out under the *OFHPA* are in place in time for the first debt offering in fall 2017:

- Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG), OEB, and IESO in relation to the refinancing of GA
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM)
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account
- Provide further criteria related to the development and implementation of the financing plan by the FSM
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

IESO Credit Facility

The Ministry of Energy indicates the IESO is responsible for financing short to medium term funding shortfalls in the implementation of Ontario's Fair Hydro Plan. This was noted by the Board as part of the legislative package brought on May 9, 2017.

To support this, the Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2B, which will provide the OFA with the capacity to provide additional a credit facility of $2 billion~~loans~~ to the IESO in order to allow the IESO to fulfil its~~the~~ commitments under the Fair Hydro Act, 2017. The Capital Investment Plan Act (CIPA) authorizes the Minister of Finance to make loans to the OFA in the amounts, times and on the terms and conditions authorized by Lieutenant Governor in Council ("LGIC").

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 Ministry indicates further work to enable GA refinancing will be undertaken Summer/Fall 2017:

- Minister to determine the Fair Allocation Amount for each reference period;
- OPG/SPV to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount;
- IESO to record deferral amounts and establish the regulatory asset;
- OPG/SPV to begin purchasing of investment asset; and
- OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests.
-

(Energy, perhaps additional section outlining what will regularly be coming before TB/MBC once OFHP is underway)

Delivery of Electricity Social Programs:

Ontario Electricity Support Program

The ministry is proposing amendments to the existing Ontario Electricity Support Program (OESP) regulation that will enable the Ministry of Community and Social Services to help new and existing social assistance clients to enroll in the OESP.

The amendments are in support of efforts to increase enrollment by reducing application burdens on target populations and enable the development of automatic OESP enrollment procedures for some

populations already receiving other government programming (in this case already receiving social assistance).

- MCSS and Energy intend to bring a temporary resources request to the July 25, 2017 TB/MBC meeting. Early indications suggest about 50 temporary FTEs within MCSS and Energy providing the funding to support increasing enrolment of Social Assistance clients onto OESP.
- The March 1, 2017 Board Minute included direction to pursue additional measures to substantially increase OESP take-up. The Ministry indicates OESP enrolment is about 35% of the targeted low-income population (about 575,000 target population). Stats provided by MCSS indicate just over 109,000 Social Assistance clients being eligible for OESP (as they receive hydro bills directly), but MCSS does not know the portion of the 109,000 that are already OESP recipients.
    - As part of the July 2017 joint submission from MCSS and Energy, Energy should provide commentary on its overall strategy to move OESP towards 100% participation (This engagement of MCSS would be part of the strategy).

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account to government funding. This timing is consistent with previous submissions and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Analysis/Risks

TBS staff noted as part of the May 9, 2017 submission focused on OFHP legislation indicated that financial, legal, and accounting external opinions and assessments of the planned approach to GA refinancing are supportive of the Ministry's intended plan for implementing Ontario's Fair Hydro Plan, noting the opinions and assessments must be revisited once key implementation details are finalised (e.g. draft legislation, regulations, special purpose vehicle documents, terms of conditions within various other agreements).
Future reassessments, Navigant's analysis of expected lifecycle for existing generation infrastructure (key), and other factors such as Ontario electricity demand, interest rates in the medium to long-term, and the rate of inflation may contribute to fiscal plan implications emerging over time.

This assessment has not changed with the current submission. The Ministry indicates Navigant's analysis is still pending along with finalized details for elements such as the special purpose vehicle documents, and terms/conditions within various other agreements.

Financial

- The multi-year fiscal profile identified by the Ministry as part of this submission (below) are consistent with the voted appropriation approved for the Ministry through the 2017 Budget. Cost forecasts for these programs were made through a combination of Ministry analysis that utilized consumption data and local distribution company rates to estimate program costs, and information provided to the Ministry by the OEB.

$M	2017-18	2018-19	2019-20	2020-21
Ontario Electricity Support Program (OESP)	140	261	325	375

- The Ministry notes it is currently assessing the potential impact of the Hydro One rate application and will report back to TB/MBC with the potential out-year impacts of this rate application.
- The allocations for the social programs are based on a number of variable inputs such as program uptake, electricity market conditions and forecasting models that are subject to change and represent an on-going fiscal risk. Sensitivity analysis will allow the government to develop a risk based outlook to understand potential fluctuations in the cost of these initiatives.
- There are no sunset dates for the programs and it is important to understand the full cost of the initiatives (including electricity price projections) for the longer term, beyond the year 2021-22.
- Lastly, further information is required on the detailed consumer impacts with assumptions and methodologies specified and documented to support better decision making and achieving the intended program goals.

Accounting

- The fiscal impact associated with the OFHP will be determined by how the series of complex transactions are accounted for on the Province's Consolidated Financial Statements which are prepared in accordance with public sector accounting standards established by CPA Canada. A number of details yet to be finalized through the regulations and various commercial agreements will impact the final accounting analysis.
- While accounting for the social programs and the Affordability Fund as transfers is fairly straightforward, the accounting for the GA mechanism is relatively more complex. To mitigate accounting risk associated with the latter, both the IESO's and OPG's external auditors have provided independent accounting opinions on the appropriate accounting for elements of the OFHP structure related to each entity, contingent on finalization of regulations and commercial agreements. Based on the audited financial results for these organizations, supported by the anticipated accounting opinions, the Office of the Provincial Controller will prepare the Province's consolidated financial statements based on public sector accounting standards.
- At this time, the Auditor General (AG) has not identified any concerns related to the accounting for the social programs or the Affordability Fund; however, the AG has voiced concerns regarding the planned accounting treatment for the OFHP as related specifically to the GA component which is expected to impact the Province's financial results for the first time in 2017-18. The AG has also publicly communicated her opposition to a change in the IESO's accounting policy to reflect rate regulated balances on its books. The Province supports the IESO's accounting treatment as more fairly presenting the economic substance of the entity's market-related activities.
- The AG is currently reviewing the Province's accounting analysis related to the Affordability Fund which reflects a $100M transfer payment to be reflected in the Province's 2016/17 Public Accounts.
- If the AG does not concur with the Province's accounting treatment, including the change in accounting treatment by the IESO, the AG may provide a qualifed audit opinion on the Provinces' financial statements in the Public Accounts.

Legal

- The ministry has stated the legal risk remains the same as identified at the May 10, 2017 Cabinet meeting regarding the *Fair Hydro Plan Act, 2017*, including and related to:

GA Refinancing

- In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion

of the benefit they receive from the useful life of the assets.

- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.
- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

The Ministry has provided an update to key risks including mitigation strategies (see Appendix G). The overview of strategic risks, from May 9 2017 TB assessment note, has been brought forward providing context for the more operational nature of Appendix G.

In addition to the risks cited in Appendix G in the implementation of the OFHP, a number of supporting arrangements are being sought by the IESO and OPG, including the following:

Indemnities for OPG (Ontario Power Generation) and IESO

- OPG and IESO have requested indemnities from the Province for their respective Directors, Officers and employees in relation to their roles in the implementation of the OFHP. Ministry of Energy staff are putting together a section 28 approvals submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO.~~sw~~
    - IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
    - Draft materials from Energy state that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
    - Energy has confirmed in its draft request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.
- As currently proposed, the Minister of Finance will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

Commented [RK1]: Is this in the latest drafts? Update.

Provincial Support Agreement or Provincial Guarantee Agreement

- As part of the OFHP and in order to provide support to those with claims against the Financing Entity (i.e., planned to be the OPG Trust) and with the ultimate objective of providing the highest possible credit ratings (and corresponding impact on interest costs to the ratepayers), the Province has been asked to provide both a Service Guarantee and a Performance Guarantee to support obligations of the IESO and the debt instruments issued by the Financing Entity.

Additional Report Backs

The Ministry has been asked to provide an update on outstanding report backs from OFHP related previous submissions. Appendix H contains the table sent to the Ministry, update is still pending.

As indicated earlier, this assessment note recommends Energy provide, as part of the joint submission with MCSS tracking to July 25, 2017 TB/MBC, an overview of its strategy to significantly increase OESP

enrolment.

Name of analyst:	James Strang/ Afshin Malekzadeh with input from OPCD, OFA and CoE	**Phone number:**	416-327-2071
Date:	June 24, 2017	**Log number:**	
Branch / Division:	GGPR / PEMD / Treasury Board Secretariat		

APPENDIX A: PROPOSED MINUTE

Commented [RK2]: Is it possible to add a "Note" type Minute on the request for indemnities and s.28 approval request?

Receive the second of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Ontario Electricity Support Program (OESP)

a) To enable Ministry of Community and Social Services to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table.

On-Reserve First Nations Delivery Credit (FNDC)

a) A correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Implementation of Global Adjustment (GA) Refinancing:

a) Roles and responsibilities of the Financial Services Manager (FSM) (i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
b) Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
c) Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
d) Provide further criteria related to the development and implementation of the financing plan by the FSM;
e) Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

ii) Recommend the following proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New General Regulation to be made under Part I of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*
b) Amendments to O. Reg. 197/17 (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA)

c) Amendments to O. Reg. 314/15 (Ontario Electricity Support Program) to be made under the OEBA

iii) Direct the Ministry to report back to TB/MBC with details of its overall strategy to substantially increase OESP enrolment, as part of the pending joint submission with MCSS to increase Social Assistance clients enrolled in OESP.

APPENDIX B: FINANCIAL TABLES

FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE					TABLE B1
		Fiscal Plan Basis			*Appropriations Basis*
$ Millions		**2017-18**	**2018-19**	**2019-20**	**2017-18**
Initiative cost		0.000	0.000	0.000	
Expense changes:					
	Oper	0.0000	0.000	0.0000	0.0000
	Oper	0.0000	0.0000	0.0000	0.0000
Total Fiscal Impact		**0.0000**	**0.0000**	**0.0000**	**0.0000**

APPENDIX C: OFHP OVERVIEW

Ontario Rebate for Electricity Consumers

The *Ontario Rebate for Electricity Consumers Act, 2016* will reduce electricity costs by 8 per cent on the amount before tax, an average savings of about $130 annually or $11 each month, for about five million residential consumers, farms and small businesses.

Eligible rural electricity ratepayers will receive additional relief, decreasing total electricity bills by an average of $540 a year or $45 each month.

Commercial, institutional and industrial ratepayers would also benefit from up to 34 per cent lower electricity costs through the expansion of the Industrial Conservation Initiative.

Details:

- The province is reducing costs for eligible rural ratepayers by providing additional funding to the Rural or Remote Rate Protection (RRRP) program.
- The Industrial Conservation Initiative (ICI) provides a strong incentive for large electricity consumers to shift their electricity consumption to off-peak hours to reduce their bills by up to one-third. Ontario intends to expand ICI to help reduce cost pressures on the electricity system and enable more consumers to reduce their electricity bill by up to one third.
- Ontario has removed the Debt Retirement Charge from residential electricity bills and introduced the Ontario Electricity Support Program (OESP) to provide a monthly credit to low-income households who have applied and meet the eligibility requirements to help reduce electricity costs.

Fair Hydro Act

The *Ontario Fair Hydro Act, 2017* reduces electricity bills for all residential consumers and as many as half a million small businesses and farms, starting this summer. Lower-income Ontarians and those living in eligible rural and northern communities will receive even greater reductions, as much as 40 to 50 per cent. As part of this plan, rate increases will be held to the rate of inflation for four years.

These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills. Taken together, these changes are delivering the largest reduction to electricity rates in Ontario's history. To facilitate these immediate savings, the legislation:

Details:

- Enables the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) to work together to spread out the costs of Ontario's clean energy investments over a longer period of time, which ensures that the costs of these investments are allocated fairly among current and future ratepayers. This will be accomplished through refinancing a portion of the Global Adjustment (GA), resulting in significant and immediate rate reductions.
- Modifies and broadens the Ontario Electricity Support Program (OESP) to expand benefits and ensure it is funded by government instead of ratepayers, reducing bills for all.
- Enhances the Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief to a total of approximately 800,000 customers and shift costs from ratepayers to provincial revenues. The enhancement will benefit customers served by local distribution companies (LDCs) with the highest distribution rates. These savings will begin July 1, 2017.
- Provides on-reserve First Nations households serviced by licensed distributors with a 100 per cent credit of the delivery line on their monthly electricity bills, starting July 1, 2017.

APPENDIX D: PREVIOUS TB/MBC MINUTE (MARCH 1, 2017)

Approve electricity rate mitigation actions that support up to a 25% electricity bill reduction (including the 8% reduction announced in 2016) for an average household in 2017.

In this regard, the Board:

i. Direct the Ministry of Energy to implement electricity rate mitigation for all electricity consumers eligible to be billed under the Ontario Energy Board's Regulated Price Plan (RPP) and any other consumers who would be eligible for RPP if their electricity account was with a licensed distributor by:

   a) Subject to completed legal, accounting and financing risk assessments, refinance the Global Adjustment (GA) in order to partially defer RPP-eligible ratepayer GA costs by reducing projected after-tax electricity costs for a typical residential customer consuming 750kWh per month in 2017 by about 16%. Total projected bill increases will be kept in line with CPI until the end of 2021. From 2022 onwards, bills will increase at a rate that ensures gradual recovery of the accumulated debt by 2048, with escalation in subsequent years set above Consumer Price Index (CPI) in order to ensure that bill increases due to repayments are capped at around 10% of the total bill.

   b) Direct the Ministry to report back to TB/MBC by Spring 2017, prior to going to LRC with any legislation, on the approach to refinance Global Adjustment , including, but not limited to:

      - Formal accounting opinions from OPG and IESO auditors.
      - Completed legal, financing and accounting risk assessments. Assessments to include, but not limited to proposed legislation, technical aspects such as Eurig analysis, and risk to borrowing (in discussion with the OFA).
      - Report on the multi-year profile of GA smoothing, identifying specific assumptions.
      - Report on sensitivity analysis completed as assumptions vary, such as under different recovery rates and periods.
      - Overall risk mitigation plan addressing completed legal, accounting and financing risk assessments.

   c) If a non-fiscal mechanism cannot be established:
      1. Direct the Ministry to report back to Cabinet and TB/MBC with options for achieving a comparable level of electricity rate mitigation in the most cost effective way, in order to minimize the impact on the province's fiscal plan.
      2. Note costs to government of proceeding if cost of refinancing of Global Adjustment is recognized as an expense in the fiscal plan of up to $2,534,000,000 in 2017-18, $2,668,000,000 in 2018-19, $2,942,000,000 in 2019-20, $3,420,000,000 in 2020-21 and $3,232,000,000 in 2021-22.

ii. Broadening the Rural or Remote Rate Protection (RRRP) program to mitigate distribution charges for customers of Local Distribution Companies (LDC) with some of the highest distribution rates, and moving the program from a ratepayer funded program to a government funded program beginning in 2017, including:

   a) Harmonizing distribution cost for customers with the highest distribution rates (Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service

territory) and Northern Ontario Wires Inc) at the lowest distribution rate paid by the average consumer of the LDCs noted by fall 2017.

b) Note costs estimated at up to $459,000,000 in 2017-18, $472,000,000 in 2018-19, $484,000,000 in 2019-20, and $497,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to broaden RRRP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the broadened program now government funded
- Report on and assessment of impacts of consolidation of LDCs
- Assessment of distribution rates and implications for the program

iii. Expanding every benefit level of the Ontario Electricity Support Program by 50%, moving the program from a ratepayer funded program to a government funded program beginning in 2017 and pursuing additional measures to substantially increase take-up.

a) Note costs estimated at up to $186,000,000 in 2017-18, $261,000,000 in 2018-19, $325,000,000 in 2019-20, and $375,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

c) Direct the Ministry to work Treasury Board Secretariat (Behavioural Insights Unit, Centre of Excellence for Evidence-Based Decision Making) to accelerate/ maximize program uptake.

d) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including fiscal plan implications to expand OESP.

e) Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:

- Identify eligibility criteria, and refinements being made.
- Current program outcomes identified and results achieved to date.
- Establishing program performance management framework including targets for the expanded program now government funded.

iv. Establishing a new government funded Affordability Fund to provide energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs and who have difficulty paying their electricity bills.

a) Approve to commit up to $200,000,000 on a multi-year basis to support the Affordability Fund.

b) Direct the Ministry to report back to TB/MBC with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

v. Establishing a new province-wide government funded program beginning in 2017 that would eliminate the delivery charge for First Nations customers on reserve.

a) Note costs estimated at up to $20,000,000 in 2017-18, $20,000,000 in 2018-19, $20,000,000 in 2019-20, and $20,000,000 in 2020-21 and on-going as part of the 2017-18 PRRT planning process.

b) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

c) Direct that any underspending related to any of the initiatives be returned to Treasury Board/Management Board of Cabinet and not be reallocated within the Ministry.

vi. Expanding the Industrial Conservation Initiative (ICI) by reducing the eligibility threshold to 500kW to enhance competitiveness for Class B manufacturers beginning July 2017.

a) Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, results achieved to date versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vii. Direct the Ministry:

a) To work with Treasury Board Secretariat and the Ministry of Finance on the development of a comprehensive risk-based costing, including forecast models and sensitivity tests on assumptions and financial estimates, for the electricity mitigation initiatives.

b) To report back to TB/MBC through regular updates including quarterly reports and the 2018-19 Program Review, Renewal and Transformation (PRRT) on the status of implementation, and revised out-year expenditure requirements if applicable.

c) To continue to work with the Ontario Energy Board, the Independent Electricity System Operator and Ontario Power Generation, through the Long-Term Energy Plan 2017, to further reduce electricity rates across the system.

d) To work with the Ministry of Finance, Treasury Board Secretariat, Cabinet Office and Office of the Premier on an integrated communications strategy.

APPENDIX E: PREVIOUS TB/MBC MINUTE (MAY 9, 2017)

Receive a report back providing an update on current implementation status, including proposed legislation, of the Ontario Fair Hydro Plan, previously at TB/MBC March 1, 2017 and announced on March 2, 2017.

In this regard, the Board:

i) Note that the proposed Fair Hydro Act, 2017, includes:

Electricity Social Programs:

a) Establishment of a First Nation Delivery Credit for On-Reserve Consumers, funded from voted appropriations.
b) Establishment of new distribution rate protection program to eligible residential customers served by LDCs with the highest distribution costs, funded from voted appropriations.
c) Shift from costs recovered from ratepayers to funding out of voted appropriations for Ontario Electricity Support Programs.
d) Delayed proclamation for OESP once proposed amendments are passed until the IESO variance account for the program is close to wound down.

Global Adjustment Refinancing:

a) Establishes the fair allocation adjustment that gives the relief to certain specified consumers during the period July 1, 2017 to June 30, 2021 to ensure intergenerational fairness.
b) Requirement for future consumers to pay the clean energy adjustment that backs financings.
c) Sets out that the Financial Services Manager (OPG) prepares the Financing Plan establishing when a funding obligation should be incurred so that the OPG entity can raise money to acquire the Investment Interest.
d) Establishes the LGIC's power to authorize the Ministers of Finance and Energy to guarantee and indemnify any debts, obligations, securities or undertakings associated with the investment interest.
e) Sets out how the regulatory asset will be determined and how it can be converted into the investment asset, and the investment asset rights.
f) Sets out that security interests can be granted in investment interests in the investment asset.

ii) Recommend the proposed Fair Hydro Act, 2017 to proceed to Cabinet for approval.

iii) Note a new credit facility is being sought by the IESO from the Ontario Financing Authority to ensure that it has the flexibility to finance clean energy costs if for some reason the OPG Trust, at any time, does not purchase any portion of the deferred Global Adjustment amounts payments. An Order in Council to allow the Ontario Financial Authority to provide an expanded credit facility will be requested.

iv) Direct the Ministry of Energy to work with Treasury Board Secretariat and the Ministry of Finance/Ontario Financing Authority and report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments.

In this regard, direct the Ministry to:

a) Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different

demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.

b) Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.

c) To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.

d) To report back with updates to risk mitigation strategies that address key financial and operational risks.

v) Note the following outstanding report back requirements from March 1, 2017 minute:

a) Broadening RRRP – Direct the Ministry to report back to TB/MBC in 2017-18 on the effectiveness, efficiency, and sustainability. Report back to include, but not limited to:
   - Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
   - Establishing program performance management framework including targets for the broadened program now government funded
   - Report on and assessment of impacts of consolidation of LDCs
   - Assessment of distribution rates and implications for the program

b) OESP – Direct the Ministry to report back to TB/MBC in 2017-18 on the program's effectiveness, efficiency, and sustainability. Report back to include, but not limited to:
   - Identify eligibility criteria, and refinements being made.
   - Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.
   - Establishing program performance management framework including targets for the expanded program now government funded.

c) Affordability Fund – Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.

d) On-Reserve First Nations Delivery Charge – Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.

e) Industrial Conservation Initiative – Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.

vi) Approve the Ministry to fund a media buy plan with a maximum value of $3,500,000 with PHD Canada, the Advertising Review Board's mandatory-use media planning and buying Agency of Record. In this regard,

a) Note the Ministry of Energy has already spent approximately $1,000,000 with PHD Media in 2016-17 and is forecasting expense of approximately $2,500,000 in 2017-18.

b) Note the Ministry of Energy will return to request a transfer of funds of up to $2,500,000 in 2017-18 to the Ministry of Energy from the Bulk Media Buy program in Treasury Board Secretariat to recover costs for the public education campaign.

APPENDIX F: PREVIOUS TB/MBC MINUTE (JUNE 13, 2017)

Receive the first of two report backs on proposed regulations related to the Ontario Fair Hydro Plan that require a recommendation prior to proceeding to Cabinet for approval.

In this regard, the Board:

i) Note that the proposed new regulations and amendments to existing regulations include the following program parameters:

Electricity Social Programs:

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

a) Provides for a fixed monthly credit ($60.50), replacing the existing prescribed annual amount and making the escalating factor unnecessary; and,
b) Sets out a process that the Ontario Energy Board (OEB) will utilize to determine the maximum monthly distribution charge that all prescribed high-cost distributors will charge their customers; and,
    1) Sets out the proposed distributors as Atikokan Hydro Inc.; InnPower Corporation; Chapleau Public Utilities Corporation; Sioux Lookout Hydro Inc.; Northern Ontario Wires Inc.; Lakeland Power Distribution Ltd. (Parry Sound Rate Zone); Algoma Power Inc. (residential); and, Hydro One Networks Inc. (Low & medium density classified customers).

On-Reserve First Nations Delivery Credit (FNDC)

a) Defines eligibility as being restricted to those residential rate class First Nations customers who are members of a band as defined under the federal Indian Act;
b) Eliminates the delivery charge, or monthly service charge for those customers served by Local Distribution Companies (LDCs) that do not have a delivery charge, for on-reserve residential First Nations customers; and,
c) Defines eligibility currently affects 11 LDCs serving on-reserve consumers: Algoma Power Inc., Attawapiskat Power Corporation, Bluewater Power Distribution Corporation, Cat Lake Power Utility Ltd., Cornwall Electric Distribution, Hydro One Networks Inc. Hydro One Remote Communities Inc., PUC Distribution Inc., and Thunder Bay Hydro Electricity Distribution; Fort Albany Power Corporation; and Kashechewan Power Corporation.

Implementation of Global Adjustment (GA) Refinancing:

a) Supports the required calculations to be made by the OEB;
b) Provides the methodology that the OEB will use in applying reductions to eligible and non-regulated consumers who are eligible for GA refinancing;
c) Sets out the near-term reductions (i.e., the reductions that will be applied by the OEB from July 1, 2017 to April 30, 2018), as well as the reductions from May 1,

2018 to April 30, 2019. Further adjustments to be made for future periods beginning May 1, 2019 would be set out in further amendments the regulation; and,

d) Provides the Independent Electricity System Operator (IESO) with the necessary authority related to its activities, including the funding, borrowing and financial arrangements.

ii) Recommend the below proposed new regulations and amendments to existing regulations proceed to Cabinet for approval:

a) New Regulation to be made under Part II of the *Ontario Fair Hydro Plan Act, 2017*, which is Schedule 1 of the *Fair Hydro Act, 2017*;
b) Amendment to O. Reg. 280/14 (IESO Eligible Investments and Borrowing) to be made under the *Electricity Act, 1998*;
c) New Invoicing Regulation to be made under the *Ontario Fair Hydro Plan Act, 2017*;
d) New Regulation (First Nation Delivery Credit) to be made under the *Ontario Energy Board Act, 1998* (OEBA);
e) New Regulation (Distribution Rate Protection) to be made under the OEBA;
f) Amendments to O. Reg. 442/01 (Rural or Remote Electricity Rate Protection) to be made under the OEBA;
g) Amendments to the O. Reg 363/16 (General) to be made under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA); and,
h) Amendments to O. Reg. 275/04 (Information on Invoices to Certain Classes of Consumers of Electricity) to be made under the OEBA.

iii) Direct the Ministry to report back to TB/MBC with:

a) The details of additional proposed regulations with financial implications prior to proceeding to Cabinet for approval; and,
b) An update on previously minuted report back requirements.

APPENDIX F: DETAILS OF PROPOSED REGULATIONS

Partial Refinancing of the GA

The ministry is proposing a new General Regulation under the OFHPA that would support the implementation of the refinancing of the Global Adjustment (GA):

- Provide for the implementation of the roles and responsibilities of the Financial Services Manager (FSM)(i.e., OPG) and OEB and IESO in relation to the refinancing of GA:
    - methodology for calculating the clean energy adjustment, the finance amount and the true-up amount;
    - required communications by FSM with OEB on clean energy adjustments for each reference period during the recovery period;
    - requiring that OEB use the FSM calculations of clean energy adjustment to determine a kWh amount for the clean energy adjustment for each reference period during the recovery period using IESO demand forecasts;
    - clarify FSM's ability to charge fees to the financing entities for the costs of its services and required activities under the OFHPA. FSM to submit methodology used for determining fees to the OEB for review and approval;
- Require that the clean energy adjustment be a specific line item on bills and that LDCs keep separate records of amounts invoiced to be produced at the request of specified parties (e.g., IESO, FSM);
- Provide criteria and detail to support key aspects of the OFHPA, including IESO deferral and the establishment and transfer of portions of the regulatory asset, as well as the establishment of the related variance account;
- Provide further criteria related to the development and implementation of the financing plan by the FSM;
    - reasonable assumptions and additional principles and that the FSM must make or take into account, such as seeking to incur funding obligations on the best terms available and flexibility to cope with changes to future fair allocation amounts; and,
- Provide for further principles that must be taken into account by the Minister of Energy in the calculation of the fair allocation amount (i.e., commodity prices, interest rates, inflation, population, electricity consumption and the useful life of electricity generation assets) and a methodology for making adjustments to the fair allocation amount, if required.

Social Programs

Ontario Electricity Support Program

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills.

The ministry is proposing amendments to O. Reg. 314/15 made under the OEBA to enable Ministry of Community and Social Services staff to sign up social assistance clients for OESP based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table. The amendment is in support of efforts to increase enrollment by reducing application burdens on target populations and enable the

development of automatic enrollment procedures for some populations already receiving other government programming.

The Ministry indicates it will return to LRC/Cabinet in the Fall 2017 with a proclamation OIC to finalize transfer of the OESP from the IESO variance account (used when OESP was funded by electricity ratepayers) to government funding. This timing is consistent with previous submission and ensures the variance account is drawn down before government funding is provided.

On-Reserve First Nations Delivery Credit (FNDC)

The Ministry is proposing a correction to the recently established FNDC regulation to add "licensed distributor" in front of "serving Cat Lake First Nation."

Regulations supporting implementation were before the Board June 13, 2017.

Rural and Remote Rate Protection (RRRP) and Distribution Rate Protection (DRP)

Regulations supporting implementation were before the Board June 13, 2017.

APPENDIX G: MINISTRY'S UPDATE ON RISKS AND MITIGATION STRATEGIES

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
1) Global Adjustment (GA) Refinancing			
Maintaining OPG's Financial Viability / Capital Structure	L	H	• OPG requires equity injections on an on-going basis from the Province (i.e., Ministry of Energy). • Equity injections are necessary to support OPG as the owner and manager of GA refinancing. The equity injections allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • In order to obtain financing, OPG would develop a special purpose vehicle (SPV). • OPG has a great deal of experience managing the risks associated with borrowing through its experience developing capital-intensive generation projects as well as their management of Nuclear Funds. • OPG will seek to achieve the highest possible credit rating (i.e., AAA is possible) in order to reduce borrowing costs and attract a wide investor base. **Update:** • Work is ongoing to finalize a draft term sheet that would serve as the basis for the Master Subscription Agreement between OPG/ENERGY and OFA. In addition, OFA and ENE to develop Service Level Agreement for monthly cash management services.
OPG Securing Capital Markets Funding	L	H	• OPG will need to obtain a portion of the required funding from the capital markets. • The Ministry, IESO, OPG and other ministries have worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the legislation enables refinancing of the GA. • In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt. • The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line. **Update:** • The legislation and proposed general regulation were developed with input from third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the Global

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			Adjustment (GA). • OPG is continuing to work through the mechanics of securing financing (e.g., engaging rate agencies, etc). • In addition, in order to provide assurances to those with claims against the "Financing Entity" (e.g., 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 IESO are carried out including obligations related to collecting and remitting clean energy adjustments. Working is ongoing.
Managing Interest Cost Risks	M	H	• OPG's Special Purpose Vehicle (SPV) / Trust is borrowing in its own corporate capacity from the capital markets. • Risk that it may incur a higher interest cost than what was originally forecast (i.e., 5%). **Update:** • The legislation and proposed general regulation were developed with input of third-party financiers (i.e., dealers) to ensure that the OFHPA enables the refinancing of the GA • The provincial guarantee as set out in legislation should provide comfort to dealers, thereby increasing the likelihood of achieving more favourable interest rates. • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
Provincial Guarantee is Triggered	L	H	• The legislation sets out that the province could provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework. The intent is to ensure that the full value is recovered. • The legislation also enables the Province to: o Through the Ministers of Energy and Finance upon approval by Lieutenant Governor in Council, agree to guarantee any debts and obligations; and **Update:** • Work is ongoing to scope the provincial guarantees. Note: The guarantees are required to support rating agency review which is expected by the end of July.
IESO Failure to Establish a Regulatory Asset / Maintaining IESO Financial Viability	L	H	• Under the legislation, the Ontario Energy Board (OEB) is providing the necessary oversight required to enable IESO the ability to establish a Regulatory Asset. • To recover its revenue shortfall, IESO will establish as a Regulatory Asset that it would sell to OPG's SPV / Trust. • The OEB will issue an accounting order to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. • IESO requires short-term financing to be in place for initial and expected monthly timing

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset. **Update:** • IESO has received an accounting opinion from KPMG that concurs with IESO's view that it has the ability to establish the regulatory asset. • In addition, OFA is planning to increase IESO's credit facility to support its role in implementing the OFHPA. OFA is proposing an OIC that would authorize the OFA to borrow an additional $2.0 billion, which would be in addition to existing authority for the Minister of Finance to provide loans to the OFA, to ensure that there is sufficient borrowing authority in place for the OFA to meet the IESO requested requirements.
Indemnities provided to OPG are triggered/called **(Not included in current June 27 submission)**	L*	~~H~~Not quantifiable*	• Ministry of Energy staff are putting together a s.28 (under the Financial Administration Act) approvals package for submission to the Minister of Finance for the Minister of Energy, on behalf of the Crown, to enter into Indemnity Agreements in favour of OPG, including its subsidiaries, and the IESO with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan. o The indemnities are expected to provide coverage for both organizations and their respective Board members, officers and employees involved in implementing the plan. o As currently proposed, the Minister will be requested to consider and sign the section 28 approval forms and the transmittal letter to Minister Thibeault. **Update:** • Work is ongoing to finalize the s.28 (under the Financial Administration Act) approval for indemnities. Note: There could be potential interactions between the provincial guarantees and the indemnities sought by OPG and the IESO, discussed below. A due diligence is currently ongoing by MOF Legal, OFA and Energy staff. A final draft indemnities package is pending.
GA Refinancing Approach is Viewed as an Indirect-tax	L	H	• In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. • Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

Risk	Likelihood (L/M/H)	Impact (L/M/H)	Mitigation Strategy/Update
			• The legislation attempts to mitigate the risks identified above by requiring that the costs moved into the future align with the benefits that future rate payers will receive. To create the flexibility to achieve this requirement, the amounts of the costs and benefits will not be enshrined in the legislation. **<u>Update:</u>** • The legislation was designed to mitigate this risk. • The Fair Allocation Amount, the process for which is further clarified under general regulation, will help to ensure that the allocation of costs associated with electricity generation facilities is reflected over the term of GA Refinancing.
2) Increasing social assistance clients' enrolment into the Ontario Electricity Support Program (OESP)			
Social Program Cost Estimating	M	M	• OESP costs will depend on uptake of the program, which will be impacted by the 50% increase in credits, enhanced eligibility, and work with MCSS on aligning OESP delivery with their social assistance programs • Work with Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO) to ensure access to data for regular forecasting. • A mechanism would be created in regulation to ensure that all parties are aligned in the yearly forecasting and costing of the program. • Social program regulations include provisions to require the IESO and the OEB to provide the Ministry with information required to update cost projections based on up-to-date figures.

APPENDIX H: UPDATE ON OUTSTANDING REPORT BACKS

Report back requirements	Expected Timing	Status (Pending from Energy)
Regulations - Report back to TB/MBC on the details of proposed regulations prior to going to LRC, and to provide the Board with an update towards completed legal, accounting and financing risk assessments	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14) Late June TB/MBC – Regulations for Global Adjustment (LRC/Cabinet – June 27)	
Global Adjustment Refinancing - Include a report related to GA Refinancing on findings from sensitivity analysis completed as assumptions vary, such as under different recovery rates, different interest rates, different demand, etc., and combinations of key factors, and then to quantify the likelihood of high/medium/low impact scenarios, with assumptions and methodologies clearly specified and documented.	August TB/MBC (TBC) – Sensitivity Analysis	
Sensitivity Analysis – Electricity Social Programs - Include electricity social programs with details of forecasting models and costing estimates, including assumptions, sensitivities analysis that would allow identification of risks to the fiscal plan for Broadening RRRP, OESP. The Ministry is to include similar information for the Ontario Rebate for Electricity Consumers.	August TB/MBC (TBC) – Sensitivity Analysis	
Electricity Social Programs and GA Financing - To report back with final program details for 2017-18 for GA Refinancing and Electricity Social Programs, including fiscal plan implications and consumer impacts with detailed assumptions and methodologies specified and documented.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Risk Mitigation - To report back with updates to risk mitigation strategies that address key financial and operational risks.	TBD – potentially details would be in the Regulations submissions	
RRRP − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	

− Establishing program performance management framework including targets for the broadened program now government funded − Report on and assessment of impacts of consolidation of LDCs − Assessment of distribution rates and implications for the program		
OESP − Identify eligibility criteria, and refinements being made. − Current program outcomes identified and results achieved to date, not just amount of funding flowed to consumers. − Establishing program performance management framework including targets for the expanded program now government funded.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Affordability Fund - Direct the Ministry to report back through quarterly reporting process with program details, including performance management framework, and multi-year funding profile, and fiscal plan implications.	Quarterly Reporting	
On-Reserve First Nations Delivery Charge - Direct the Ministry to report back to TB/MBC by Spring 2017 with final program details, including performance management framework, and clarifying how the programs aligns with the significant Ontario Energy Board estimate of program costs, from $13M to $20M.	June 13 TB/MBC – Regulations for Electricity Support Programs (LRC/Cabinet - June 14)	
Industrial Conservation Initiative - Direct the Ministry to report back through quarterly reporting process with results achieved versus expectations for the ICI program, impacts of the change for participation, and impact for ratepayers as costs are recovered from ratepayers.	Quarterly Reporting	

APPENDIX I: OVERVIEW OF RISK (CENTRAL AGENCIES PERSPECTIVE)

Prepared by TBS staff, the following chart provides an overview of strategic (versus operational) risks to inform the approval/decision making process regarding the proposed legislation. Each part, GA Partial Refinancing & Electricity social programs, is a separate table.

Global Adjustment Partial Refinancing:

Objective: Provide immediate ratepayer relief by capping rate increases at Consumer Price Index (CPI) for four years and refinancing GA costs over a longer period of time. Develop and implement a financing structure that increases provincial borrowing, but has no impact on annual provincial surplus/deficit.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA smoothing being allocated to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there could be a negative impact on the province's fiscal plan up to $2.5B in 2017-18 and rising. • Rating agencies and investors in the Province's debt may view all of the borrowing as an obligation of the Province, especially taking into account the nature of provincial guarantees, which could put pressure on the Province's credit rating and overall borrowing capacity. • Proposed structure may result in a negative response from Ontario Auditor General (OAG) due to previous concerns regarding recognition of rate regulated assets and liabilities. The AG has already expressed concerns regarding the accounting treatment on the IESO's books which could lead to a qualification of the Province's consolidated financial statements. • Initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to justify structure of financial model and be utilized in discussions with the OAG. • Identify potential options to minimize the balance of rate regulated assets remaining on the IESO's books at fiscal year-end.

Risk	Level of Risk	Risk Response
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.
A legal determination that the Province is spreading the costs of GA financing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Medium **Risk Impact:** High **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and close monitoring of costs and changes in variables built into model. • Analyze the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Financing the costs of GA smoothing through OPG SPV/Trust and the volatility of interest rates may increase the cost of GA smoothing and/or require additional provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Moderate **Time Scale:** 12 to 24 months **Rationale** • The proposed structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on interest rate for borrowing, the amount of equity/funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the government to offset a part of the scheduled increases. • Risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's ratings and cost of borrowing.	Risk can be avoided by: • Province providing a potential guarantee for the cost of borrowing – however, would redirect risk back to the Province and negate benefits of proposed financing structure. Risk can be mitigated by: • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost. • Proposed legislation to enable GA refinancing has been draft with input from third-party financers. Provides a 'narrow' provincial guarantee and ensuring that debt holders have the right of action against a future government to recover the amount outstanding including interest, fees, expenses and any damages.

Risk	Level of Risk	Risk Response
The determination of the appropriate legal and accounting treatment to be applied to the financing model may result in the costs of GA Refinancing having a fiscal impact to the province.	**Risk Likelihood:** Possible **Risk Impact:** Critical **Time Scale:** 6 to 12 months **Rationale:** • The structure of the GA deferral was designed to result in an increase in provincial borrowing, no increase in net debt and no impact on surplus/deficit. • The proposal assumes GA refinancing does not have a fiscal impact because the legal authority and accounting treatments are met. • If a favourable legal and accounting treatment is not implemented, there would be a negative impact on the province's fiscal plan of up to $2.5B in 2017-18 and rising. • Rating agencies and investors in Province's debt may view all of the borrowing as an obligation of the Province, which could put pressure on the Province's credit rating and overall borrowing capacity. • The proposed structure may result in an opinion from the Ontario Auditor General (OAG) considering previous concerns regarding recognition of rate regulated assets and liabilities. The OAG may take this into account when the provincial books are audited. • An initial assessment of the accounting considerations suggests that the proposed model is in alignment with established accounting standards. Additional analysis is still required.	Risk can be mitigated by: • Commissioning external opinions on the legal, fiscal and accounting requirements, which could be used by the Province to support discussions of the financial model with the OAG.
Uncertainty in the financial model due to dependence on assumptions that are subject to potential volatility may result in higher than anticipated future costs for rate payers and the province.	**Risk Likelihood:** Likely **Risk Impact:** Major **Time Scale:** More than 36 months **Rationale** • The financial model developed is a high level and aggregate model, which is built on independent forecasts. There are a large number of assumptions built into the model explicitly and implicitly (as a larger number of assumptions are embedded into the other forecasts that are used as inputs into the model). • The proposal financing structure will accrue total interest of about $26.2 billion, which is sensitive to many factors, including interest rate, natural gas and carbon prices, generation costs and demand levels.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the financial models. • Building permissive language in the legislation and regulations to allow for timely course correction mechanisms (i.e. higher payment amounts and/or rate increases) • Regulations to prescribe the methodology to be applied by the Ontario Energy Board (OEB) to determine electricity rates in response to potential deviation from forecasted financing plans.

Risk	Level of Risk	Risk Response
A legal determination that the Province is spreading the costs of GA refinancing in order to lower the price in the short term by increasing the price in the long term may result in the GA charge characterized as a tax and deemed unconstitutional.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** Long-Term (More than 36 months) **Rationale** • If characterized as a tax, the GA charge could be subject to legal challenge and struck down as unconstitutional, allowing consumers to recover their payments. • Likelihood dependent on the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year. The bigger the reduction in charges to current consumers, the higher likelihood of the risk being realized. • Internal and external expertise have provided opinion that the proposed structure is constitutionally sound in the short-term (2017-18), but the likelihood of the risk increases in the proceeding four years, which will impact commitment to keep rate increase in line with CPI. • If annual increases in bills or the commodity prices are subject to caps, additional borrowing/provincial funding may be required.	Risk can be avoided by: • Imposition of a valid tax. • Change in policy (i.e. allow greater rate increases during the remainder of the rate mitigation phase and higher increases and payment amounts throughout rate increase and payment phase). • Use of public funds to ease pressure. Risk can be mitigated by: • Improve forecasting model and ongoing monitoring of costs and changes in variables built into model. • Analysis of the costs and benefits of the long lived assets (specifically usability beyond a 20 year period) to assist in determining a supportable GA deferral structure. • Draft legislation with built-in provisions to allow for the balance of the legislation to remain in effect if any particular clause or section is struck down by a court.

Risk	Level of Risk	Risk Response
Refinancing GA costs through an OPG SPV Trust may increase costs and/or require provincial funding.	**Risk Likelihood:** Possible **Risk Impact:** Major **Time Scale:** 12 to 24 months **Rationale** • The proposed borrowing structure will be reviewed by credit agencies to allow OPG to borrow in the open market. Depending on assessment, there may be an impact on the interest rate for borrowing, the amount of equity / funding the province may need to provide and the requirement for a provincial guarantee. • As the OPG SPV/Trust will be borrowing in its own corporate capacity from the public markets, it will likely incur a higher interest cost compared to the Province's borrowing. • There is a risk that credit rating agencies may perceive OPG SPV/Trust's borrowing as debt supported by Province, impacting Province's own ratings and cost of borrowing. • If the Trust can't raise the full funding requirements, additional cash injections would be required. If the borrowing cap of $28B (in the March 1, 2017 Cabinet Submission) is reached sooner than forecast, the province may have to provide incremental funding to float the program to 2047. • Beyond 2022, when steep increases are required, there will likely be additional pressure on the province to offset a part of the scheduled increases. • Fiscal impacts will be subject to fluctuations in Ontario electricity demand, GA and interests rates in the medium-to long term.	Risk can be mitigated by: • Providing a "provincial guarantee" for the cost of borrowing. • Drafting legislation to provide assurance to OPG and investors regarding the permanence of the GA refinancing framework and the authority of the legislation to pass the legislation; and enable the Province to guarantee borrowing of the trust in the event of a market disruption. • Specifics of a guarantee are dependent on the negotiation of agreements not yet initiated. • Equity injections from the province to support OPG as the owner and manager of GA refinancing and allow OPG to strengthen the capital structure of the Trust in order to secure financing at a reasonable cost.

Electricity social programs (Enhancing Electricity Support & Conservation Programs):

Objective: Shift funding of existing and new electricity support programs (RRRP, OESP, Affordability Fund, First Nations Credit) from rate to tax base.

Risk	Level of Risk	Risk Response
Uncertainty in forecasting due to exposure to changes and/or volatility (i.e. interest rates, electricity usage patterns, and distribution costs) may result in higher than anticipated fiscal impacts for the Province.	**Risk Likelihood:** Possible **Risk Impact:** Major **Timescale:** 12 to 24 months **Rationale:** • The energy sector is complex and a number of key assumptions used as inputs into forecasting model are variables/forecasts themselves, resulting in a high inherent risk that cost estimates are inaccurate. • Fiscal projection is highly dependent on factors which can fluctuate from year to year, including: o electricity usage; o distributions costs; and o consumer consumption patterns that may change due to extreme weather or other factors. • Fiscal projection is subject to knowledge of future distribution costs and dependent on submission of cost of service applications by Hydro One and LDCs. o Enhanced RRRP may create disincentives from the eligible LDCs towards productivity and performance improvements and/or cause ineligible LDC's to drive up distribution costs to gain access to program.	Risk can be mitigated by: • Development of a risk-based outlook, based on an analysis of scenarios, to determine the sensitivity and financial impact of potential changes in variables used in the forecasting models.

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim; Gavin He
Subject: RE: Part 2 OFHP Regs - Draft Sub and RAN
Date: Thursday, June 29, 2017 8:30:47 AM

Thanks Bruno. That's good, though too bad the s.28 approval request was not explicit in the Minute, but it is in the text of the note.

Ron

From: Bruno Amara
Sent: June-29-17 8:28 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Part 2 OFHP Regs - Draft Sub and RAN

Hi Ron

The minute note remained in the final as did our other indemnity edits.

Bruno

From: Strang, James (TBS) [mailto:James.Strang@ontario.ca]
Sent: Thursday, June 29, 2017 8:22 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Chris Skubel (MGS) <Chris.Skubel@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Part 2 OFHP Regs - Draft Sub and RAN

Final attached. Recommended minute not changed by TB/MBC or Cabinet.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 28, 2017 11:39 PM
To: Strang, James (TBS); Skubel, Chris (TBS)
Cc: He, Gavin (OFA)
Subject: FW: Part 2 OFHP Regs - Draft Sub and RAN

Hi James/Chris

I did have one follow-up. Did the final minute still include the following note (from proposed minute on page 9 of attached draft RAN)?

"Note the Ministry is working with central agencies on the credit facility for the Independent Electricity System Operator (IESO) and on a request for indemnities for Ontario Power Generation and IESO."

We're briefing Minister at 10am on Indemnity Agreement among other things and just want to confirm that work on this agreement was noted in the minutes.

Thanks
Bruno

From: Gavin He
Sent: Tuesday, June 27, 2017 11:55 AM
To: James Strang (MOF) <James.Strang@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Part 2 OFHP Regs - Draft Sub and RAN

Hi James,

Please find attached the edits from CEFD on the latest version of the RAN note.

Regards,
Gavin He

From: Gavin He
Sent: Monday, June 26, 2017 11:08 AM
To: James Strang (MOF) <James.Strang@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Part 2 OFHP Regs - Draft Sub and RAN

Hi James,

Please find attached the edits from CEFD. I will keep you updated in case we have any additional edits.

Thanks,
Gavin He

From: Ronald Kwan
Sent: Saturday, June 24, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: Fwd: Part 2 OFHP Regs - Draft Sub and RAN

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
To: "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
Cc: "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
Subject: Part 2 OFHP Regs - Draft Sub and RAN

Hi,

Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early afternoon.

James

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara
Subject: RE: Policy question re OFHP Credit Facility Agreement
Date: Friday, August 04, 2017 3:56:03 PM

Hi John,

Is it fair to say that the earlier IESO (and original OPA) credit facility was unsecured because the OPA (and IESO) had access to the rate base for the items that the facility was bridging for (e.g., RPP)?

The issue here might be that the timing of the sale of the regulatory asset is subject to some uncertainty, and that access to the ratebase is deferred for a few years.

Is there any suggestion of a risk of a provision being required to be taken against draws? Under normal circumstances, of course, this is supposed to be a revolving and short-term facility – fair to say?

Ron

From: John Kim
Sent: August-04-17 15:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Policy question re OFHP Credit Facility Agreement

Fyi. In case you hear back on this….

From: John Kim
Sent: Friday, August 04, 2017 3:42 PM
To: William Tan <William.Tan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hi Lisa, William,

I am OK as long as the proposed approach is consistent with OFA's lending policy and practices. We have generally not opined on the details of the lending agreement, as we have been communicating.

I do want to copy Ken and Mike to ensure that they are onside, as well.

Thanks,

John

From: William Tan
Sent: Friday, August 04, 2017 3:24 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hello Bruno and John,

If you wish, I can arrange a call between legal and CEFD today.

From: Lisa Stein
Sent: Friday, August 04, 2017 2:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>
Subject: Policy question re OFHP Credit Facility Agreement
Importance: High

Hi Bruno and John,

I have some additional information pertaining to the structure of the OFA loan to IESO re: OFHP. While this information adds context, it doesn't address the policy question of whether an unsecured loan is appropriate (based on the extent of the insolvency risk) for this regulatory asset.

The current draft FHP Credit Facility Agreement is consistent with the OFA Lending Policy (last revised and approved April 16, 2010 – *status TBC*), which provides that except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, the OFA will generally lend on an unsecured basis (apart from the intercept provision) in respect of loans made by the OFA to public bodies (IESO is a public body for the purposes of CIPA). As such, the structure of this loan is consistent with the Policy (subject to my note below re: intercept provision). In my review of the supporting policy documentation, including the LRC minute, I didn't see any reference to a secured lending structure and I don't believe that there is any direction requiring this to be a secured loan. That being said, I query whether OFA CEFD staff are comfortable with this approach (see below).

In terms of the intercept provisions, which are required pursuant to s. 23 of CIPA, I have asked Toby from MOF Legal if they are aware of any agreement between the Ministry of Energy and the IESO agreeing that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the IESO amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this loan agreement (as required by CIPA)? Are you aware of any such agreement? However, even if there were such an agreement in place, it is unclear to whether adding intercept provisions to the credit facility agreement, will provide further comfort. I

plan to discuss this matter further with MOF Legal.

Based on the foregoing (and pending any additional information that Toby may obtain from his discussions with the Ministry of Energy), I defer the following question to CEFD staff:

> **Are you comfortable with the current structure of this loan as an unsecured loan (and the risk that this may entail)?** This decision ultimately needs to be made by business/policy people.
>
> - **If yes,** the next draft of the agreement will be available in the next day or so to send to IESO for review. I will work with MOF Legal to draft/leverage intercept provisions to mitigate this risk (as far as possible, based on the foregoing). We are also working on the permitted liens, *pari passu* and negative pledge provisions of the draft agreement, as previously discussed.
>
> - **If no,** additional Ministerial/TB direction, and a new legal agreement (likely with the assistance of external legal counsel) will be required. This will take additional time.

Please do not hesitate to contact me if you would like to discuss further.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: Bruno Amara; John Kim
Subject: RE: Policy questions re OFHP Credit Facility Agreement
Date: Friday, August 11, 2017 4:17:54 PM

Hi Bruno,

Would it have been an option or feasible for the credit facility to be secured by the regulatory asset? In theory, as the draws would only be until the financing entity purchases the regulatory asset, at that point the security could be released if IESO were required to use a portion of the proceeds of the sale of the regulatory asset to pay down the credit facility.

Ron

From: Bruno Amara
Sent: August-11-17 16:09
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement

Hi Ron, John

I met with OFA Legal and Documentation on these ongoing discussions regarding the IESO/OFA credit facility. At this point in order to move this forward, a directive is required from the Minister exempting the intercept provision with respect to the $2B facility. This is because the OFA lending policy requires that unsecured loans have an intercept provision, which allows the Minister to deduct from a public bodies appropriation owing amounts. There is no appropriation for IESO, so this provision, is not required. They are looking to EFB to draft the directive and supporting briefing note. We are a bit short on resources, but I can assign someone to this next week, and I'm sure we can get input from both documentation and OFA Legal on this.

The Minister is away until September. Documentation will communicate with IESO on timing and process issues. Until September IESO will use the $975M facility. It is expected that by September there will be another draw taking IESO draw from $250M to $503M. There will need to be a process to move the draw from one facility to another. I don't think we are involved in that.

Bruno

From: Sarah Harris
Sent: Friday, August 11, 2017 9:35 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim

<John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Thanks for clarifying the approach on this matter.

Based on this, we will not be seeking a security interest in the Regulatory Asset and will be seeking a directive ASAP for an exemption from inclusion of the intercept provision in the $2B FHP facility. We will inform IESO that current $975 million facility will be used for funding draws until such time as we are able execute the new $2B FHP facility.

Thanks,
Sarah

From: Ken Kandeepan
Sent: Thursday, August 10, 2017 5:12 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Sarah

Thanks for clear detailed email with good questions, however, instead of responding to each of the questions, I am going back to my earlier premise that none of the loans currently on the OFA loan book have any kind of security attached to them. A good example is the current line of credit extended to the IESO for $975 million. Given this I am very reluctant to impose a security requirement the proposed $2 billion facility to the IESO from the Province.

I understand that the security requirement which is part of the OFA lending policy can waived with ministerial approval, I suggest that it be obtained as soon as possible. If there are delays in obtaining this approval, especially since the minister will be on vacation from the end of this week onwards, I also suggest, if possible the previous facility of $975 million continue until the new facility is in place. This will allow IESO to fund any regulatory assets created in the intervening period.

I have discussed my proposed approach with Gadi, who is supportive.

Thanks

Ken k

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

> The steps of the transaction would be:
>
> 1 – The IESO makes payments to electricity producers at the contracted rate, but charges consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
> 2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;
> 3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
> 4 – The IESO repays the OFA for the loan.
>
> Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

> *"Dear Anthony,*
>
> *My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?*
>
> - *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
> - *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
> - *[Include additional questions]*
>
> *I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another*

agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.

Best regards,"

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim

<John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Sarah
>
> Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.
>
> But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be problematic for OFHP?
>
> I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset.
> Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.
>
> Bruno
>
> ---
>
> **From:** Lisa Stein
> **Sent:** Wednesday, August 09, 2017 10:58 AM
> **To:** Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan

<Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Bruno Amara
Subject: RE: Policy questions re OFHP Credit Facility Agreement
Date: Wednesday, August 09, 2017 12:45:02 PM

Hi Bruno,

I would not think it unreasonable for MOF and OFA Legal to look for a point-by-point response to the email(s) from Toby and Lisa -- to the degree that the IESO credit facility situation may differ from that of loans to public bodies.

This would include discussing the point on the regulatory asset and the ultimate planned sale of the regulatory asset, and if there should be any provisions earmarking what the IESO is to do with proceeds from that sale – ensuring that proceeds be used to pay down the draws on the OFA credit facility.

As noted before, whatever is done would have to be viewed within the context of the objectives of the FHP, and not interfering with the achievement of those objectives (rather, the intent is to support them).

Not sure if putting in a security interest on the regulatory asset would be problematic from a smooth flowing of the FHP perspective.

I might think that a provision on use of proceeds from IESO's sale of the regulatory would be easier to put in place, without affecting the FHP mechanics, but others should weigh in on that.

Ron

From: Bruno Amara
Sent: August-09-17 11:28
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Ron

The emails below are in regard to the OFA / IESO lending agreement (and to emails from last week). The agreement is near final, but got hung up last week on a discussion of the $2B facility being unsecured (as are other loans) and whether this loan should be treated as all others.

Sarah Harris (Documentation is asking us to opine). My non-expert reaction was that it would be treated as other loans – as Ken suggests below. However, MoF Legal (Toby Whitfield) raises questions (below) which I'm not in a position to answer.

We have an internal call at 2pm today to discuss. Per John's reply to Documentation (Will Tan) last week, I'm inclined to support the current draft based on Ken's advice. But I want to check with you first in case you have other thoughts.

Happy to discuss.

Thanks
Bruno

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein

Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.
    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Bruno Amara
To:	Ronald Kwan
Cc:	John Kim
Subject:	RE: Policy questions re OFHP Credit Facility Agreement
Date:	Friday, August 11, 2017 4:25:12 PM

Hi Ron

Yes, I believe that was a possibility and that was the option raised by MoF and OFA legal. But I think Ken's response below (with Gadi's) backing was let's move forward with the unsecured loan per other OFA facilities. I'm not sure if this was due to a combination of the additional tome it would take to redraft and get agreement with IESO and/or judgement on the level of risk in going with an unsecured facility. I believe IESO had issue with the secured loan language although I'm unsure of reasons. But will look into that.

Bruno

From: Ronald Kwan
Sent: Friday, August 11, 2017 4:18 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Bruno,

Would it have been an option or feasible for the credit facility to be secured by the regulatory asset? In theory, as the draws would only be until the financing entity purchases the regulatory asset, at that point the security could be released if IESO were required to use a portion of the proceeds of the sale of the regulatory asset to pay down the credit facility.

Ron

From: Bruno Amara
Sent: August-11-17 16:09
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement

Hi Ron, John

I met with OFA Legal and Documentation on these ongoing discussions regarding the IESO/OFA credit facility. At this point in order to move this forward, a directive is required from the Minister exempting the intercept provision with respect to the $2B facility. This is because the OFA lending policy requires that unsecured loans have an intercept provision, which allows the Minister to deduct from a public bodies appropriation owing amounts. There is no appropriation for IESO, so this provision, is not required. They are looking to EFB to draft the directive and supporting briefing note. We are a bit short on resources, but I can assign someone to this next week, and I'm sure we

can get input from both documentation and OFA Legal on this.

The Minister is away until September. Documentation will communicate with IESO on timing and process issues. Until September IESO will use the $975M facility. It is expected that by September there will be another draw taking IESO draw from $250M to $503M. There will need to be a process to move the draw from one facility to another. I don't think we are involved in that.

Bruno

From: Sarah Harris
Sent: Friday, August 11, 2017 9:35 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Thanks for clarifying the approach on this matter.

Based on this, we will not be seeking a security interest in the Regulatory Asset and will be seeking a directive ASAP for an exemption from inclusion of the intercept provision in the $2B FHP facility. We will inform IESO that current $975 million facility will be used for funding draws until such time as we are able execute the new $2B FHP facility.

Thanks,
Sarah

From: Ken Kandeepan
Sent: Thursday, August 10, 2017 5:12 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Sarah

Thanks for clear detailed email with good questions, however, instead of responding to each of the questions, I am going back to my earlier premise that none of the loans currently on the OFA loan book have any kind of security attached to them. A good example is the current line of credit extended to the IESO for $975 million. Given this I am very reluctant to impose a security requirement the proposed $2 billion facility to the IESO from the Province.

I understand that the security requirement which is part of the OFA lending policy can waived with ministerial approval, I suggest that it be obtained as soon as possible. If there are delays in obtaining this approval, especially since the minister will be on vacation from the end of this week onwards, I also suggest, if possible the previous facility of $975 million continue until the new facility is in place. This will allow IESO to fund any regulatory assets created in the intervening period.

I have discussed my proposed approach with Gadi, who is supportive.

Thanks

Ken k

From: Sarah Harris
Sent: Thursday, August 10, 2017 11:56 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Hi Ken,

Yesterday we held an internal meeting to discuss issues identified by Lisa and Toby regarding inclusion of an intercept provision in the new $2B FHP Credit Facility, as well the factors that the OFA needs to consider on whether or not to seek a security interest in the Regulatory Asset. We will need to obtain further information from IESO to inform the OFA's final determination on these matters, and also require your input on certain items below.

Security Interest - Background

In reference to Bruno's comments and your comments below, if the OFA were to take a security interest in the Regulatory Asset, any security interest would only be applicable while the IESO was the holder of the asset, and only while it is being held by the IESO with money borrowed from the OFA.

The steps of the transaction would be:

1 – The IESO makes payments to electricity producers at the contracted rate, but charges

consumers a rate that is set by the FHP, which leaves a shortfall that must be made up;
2 – The IESO borrows money from the OFA to finance the shortfall – it is at this stage that the OFA would consider taking a security interest in the asset, up to the amount that the OFA lends to the IESO;
3 – The IESO bundles the right to charge consumers for the shortfall in the future through the GA into the Regulatory Asset, which is sold to the OPG SPV, which sale can be of the asset free and clear of any security interest;
4 – The IESO repays the OFA for the loan.

Steps 3 and 4 can happen simultaneously. If it is deemed to be something that the OFA would like to do, the security interest would only apply while the IESO holds the assets that it creates using the OFA loan to finance the purchase of electricity that it does not charge for. Once the asset is sold to the OPG SPV, the loan can be repaid and the security interest that the OFA had in the asset can be discharged.

Intercept Provision - Background

Regarding the inclusion of the intercept provision, the OFA Lending Policy (attached, see p. 4 "Security" section), stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

Question for Ken: Are you aware of how we might determine if the Legislature has appropriated funds for IESO? If the amounts are minimal, there would seem token benefit to include the intercept provision in the new FHP credit facility agreement

Draft E-mail to IESO

We would like to ensure that we obtain from IESO all the information that would be required to make a risk assessment as to whether an intercept provision and/or a security interest by the OFA in the Regulatory Asset would be required.

Request for Ken: We are drafting an e-mail to send to IESO today (below) to request information that is pertinent for an analysis regarding these matters. We would appreciate if you could please review the draft and amend it to include all key questions that would be required to make a risk assessment.

"Dear Anthony,

My apologies for the delay in providing the next turn of the FHP Credit Facility Agreement. We became aware of a potential requirement under the OFA's lending policy which needs to

be considered internally for inclusion in the agreement, for which we require additional information. Would you kindly provide answers to the following questions?

- *Does IESO have other financial obligations (such as but not limited to swap agreements, other financial obligations etc.) that could become due and adversely impact IESO's ability to pay its debts when they become due?*
- *Does IESO have any other financial obligations or security interests that could attach to the Regulator Asset/Special Purpose Vehicle?*
- *[Include additional questions]*

I also want to make you aware that due to the internal assessment that must be made in respect of the OFA's lending policy, we will likely not be able to execute the new FHP facility prior to IESO's next funding request (for which IESO will be providing notice on August 17th, for funding on August 21st). Accordingly, the August FHP draw will be made under the existing $975 million credit facility. At the time we execute the new $2B facility, we would be able to transfer (by incorporating into the agreements the required provisions or by another agreed mechanism) any amount of loans exceeding $475 million (being the reduced facility limit under the draft amending agreement) under the existing facility to the new facility.

Best regards,"

In reference to the last sentence above in the draft e-mail to IESO, the intended financing structure for IESO credit facilities is to (i) execute a new $2B FHP facility and (ii) simultaneously reduce the existing $975 million facility by $500 million to $475 million. This would create a total aggregated limit of $2.475 billion. Ideally these 2 agreements would have been executed simultaneously prior to the August draw from IESO (since IESO's August draw will likely bring the balance of the existing credit facility to approx. $500M, exceeding the intended revised limit of $475 million).

Question for Ken: When we do execute both agreements, are there any obstacles from an operational perspective (settlement, cash, accounting, risk) with transferring any 'excess loan amount' from the existing credit facility to the new FHP credit facility? We would be looking to re-allocate certain loans from the existing facility to the new facility, without any cash flow impact. From a legal perspective we expect this should be fine, as we can work out the legal particulars with IESO.

General Note re: Timing Impact of Intercept Provision

Regardless of whether the OFA decides to include or exclude the intercept provision, the execution of the FHP facility will take longer than expected, likely taking an additional number of weeks.

If the decision is made not to include the intercept provision, a directive will need to be obtained from the Minister to this effect, potentially taking a few weeks.

If it is a determined an intercept provision is required, then this will likely even take longer than

getting a directive from the Minister. In this case, the OFA would need to go back to the Ministry of Energy to effect the following: (I)Ministry of Energy will need to agree with IESO on acceptance of the inclusion of intercept provision in the FHP credit facility agreement and (ii) the OFA and Ministry of Energy will require an MOU whereby the parties agree on the inclusion of a the intercept provision in the FHP credit facility agreement.

Thanks
Sarah

From: Ken Kandeepan
Sent: Wednesday, August 09, 2017 1:54 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: Policy questions re OFHP Credit Facility Agreement

Totally agree with Bruno, the province should not be taking a security intent in the reg asset, that would make the sale to the SPV or trust rather difficult.

It would also create issues in terms of the SPV's ability to obtain an appropriate credit rating as well as issue debt in the capital markets.

Thanks

Ken k

Sent from my iPhone

On Aug 9, 2017, at 1:46 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Sarah
>
> Apologies for delay. I perceive differing levels of comfort with the issue of security so I'm OK with discussing the questions raised this afternoon. I am concerned whether we have people on the call that can answer all the questions.
>
> But I have a basic question with respect to the issue of the Province taking a security interest in the asset and differences with this loan from others. Under the OFHP, the sale of the asset ultimately allows for payments to electricity generators. If the Province has a security interest in the asset, can we envisage a potential situation wherein the IESO would be repaying the OFA loan rather than paying generators, which would be

problematic for OFHP?

I had discussed with Ron. In regard to Toby's last question, Ron was wondering if there might be a provision on use of proceeds from IESO's sale of the regulatory asset. Ron had also asked whether OPCD had opined on any accounting issues, and whether OIC or Minister's directive gave any particular direction on this issue. In regard to the latter, I have checked. Minister's directive and OIC were fairly high level noting specific terms and conditions to be set out in the Agreement.

Bruno

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:58 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: RE: Policy questions re OFHP Credit Facility Agreement

Thank you Sarah. I should add that under the OFA Lending Policy, the intercept provision (and accompanying MOU, etc.) must be included in OFA loan agreements *except* where otherwise directed by the Minister of Finance, Treasury Board, or Cabinet. As such, if it is determined that the intercept provisions are not required/relevant in this case, Ministerial direction will be required. We can discuss further this afternoon.

Lisa

From: Sarah Harris
Sent: Wednesday, August 09, 2017 10:37 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hello Bruno and John,

In advance of our internal call this afternoon, Lisa and Toby have prepared the following e-mail below to consider whether the OFA should consider taking a security

interest in the Regulatory Asset as security for $2B credit facility, as well as the inclusion of the intercept provision. Ken Kandeepan expressed the following view yesterday:

> *"…[the $2B Facility] is unsecured but so is every loan issued by the OFA to a public body so not sure why the risk associated with this loan is greater or for that matter lower than the loans currently in the OFA's loan book.*
>
> *As such, this should be treated exactly like all the other loans. Note that the IESO is fully consolidated with that of the Province so loans issued by the OFA to IESO will be a wash upon consolidation."*

In light of this, could you please advise if there are there any additional considerations regarding the FHP structure that would could necessitate the inclusion of an intercept provision in the $2B facility and/or the OFA taking a security interest in the Regulatory Asset?

I am including Ken and Mike Manning in this e-mail, should they have any additional input or insight on this matter.

Thank you,
Sarah

From: Lisa Stein
Sent: Wednesday, August 09, 2017 10:09 AM
To: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Policy questions re OFHP Credit Facility Agreement
Importance: High

Hi Sarah H. and Will,

Based on the e-mails to date, I understand that OFA staff held a conference call yesterday and based the OFA Lending Policy and past practices, may have concluded that it is appropriate for the loan to the IESO in relation to the OFHP to be unsecured, as per other OFA loans to public bodies. However, as neither Toby (from MOF Legal) nor I were part of the aforementioned call, we wanted to clarify that this loan is NOT necessarily the same as other OFA unsecured loans to public bodies, and as such, the protection provided by the "intercept" provisions of the standard OFA loan agreements have limited application in this particular case (which is likely the reason why these provisions were not included in the original drafts). Our understanding is that, although the intercept provisions are intended to allow the Minister of Finance to deduct from money appropriated by the Legislature for payment to the Borrower amounts equal to any amounts that a Borrower fails to pay to the OFA on account of indebtedness under the loan agreement, in the case of the IESO as Borrower, these amounts are likely to be minimal.

Before proceeding, we would like to ensure that the nature of the loan, the impact of intercept provisions, and the insolvency and operational risks, have all been considered. Toby has succinctly summarized the questions which still need to be addressed during our call this afternoon in the e-mail which I have forwarded below.

Lisa

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, August 08, 2017 5:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Lisa,

I have attempted to summarize my questions/issues in the below. Let me know if you have anything to add or have any edits.

The concerns I have with the IESO loan, and that should be considered are related to what could happen to the Regulatory Asset (the "Asset") if there are any credit or liquidity issues at the IESO. Because the Asset is something that it is possible to take security in, and that is an intangible that may be subject to a floating charge (ie, as a result of a GSA or from a financing agreement) I thought it would be prudent to consider whether the OFA should take a security interest in the Asset as security for the loan.

I am not familiar with the types of financial arrangements or other obligations that the IESO may be a party to, either as a result of its market operations or otherwise, but it may be possible that the IESO has entered into such arrangements, such as swaps or other derivatives agreements, loans or other financing arrangements for which security could be given.

I am not aware of what financial guarantees or other arrangements may be in place such that the Province may have guaranteed the IESO's obligations, but I don't believe that there are any. My understanding is that the IESO is consolidated with the Province's books, but that the IESO is not a crown agent, and the Province is not liable for the IESO's obligations to third parties. However, I am not sure about the underlying facts without more input from ENERGY and the IESO.

In light of these questions it may be worthwhile to consider some related issues:

- How does the proposed IESO loan compare to other OFA loans made to public bodies, such that it is appropriate to use the same requirements?
    - Size of loan – it is my understanding that there are not many loans that approach the size of the $2 billion loan that is proposed to the IESO.

    - Are the obligations of the IESO the obligations of the Province, and how does this compare to other public body loans?
    - What other financial obligations could the IESO have (such as swap agreements, other financial obligations) that could become due or create credit risk?
    - If in many public body loans, there is an intercept and an MOU with the appropriate ministry to create some security, does that make sense in this context? Are there significant transfers to the IESO?
    - Note that the OFA loan to the ROM was secured by pledges and an intercept, and that other Provincial loans to public bodies or other groups may be secured.
- Does the Province/OFA understand the financial obligations of the IESO such that it is confident that no other security interest could attach to the Asset?
- Given that the debt is specifically for the purpose of creating the Asset which will be "warehoused" at the IESO, once the Asset is sold to the financing entity, how will the Province ensure that the proceeds can only be used to repay the loan?

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	John Kim
To:	Ronald Kwan
Subject:	RE: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program
Date:	Tuesday, November 28, 2017 12:30:54 PM

No reason, and I've asked Shruti to keep me in the loop. This is when OPG Treasury is involved CMD and FTD usually leads.

From: Ronald Kwan
Sent: Tuesday, November 28, 2017 12:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Hi John,

Any reason why you're not on the primary email list?

Ron

From: John Kim
Sent: November-28-17 11:09
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Fyi.

From: Talwar, Shruti (ENERGY) [mailto:Shruti.Talwar@ontario.ca]
Sent: Tuesday, November 28, 2017 10:12 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

FYI

From: Talwar, Shruti (ENERGY)
Sent: November 28, 2017 10:10 AM
To: 'RYFA Ken -TREASURY'; Manning, Mike (OFA); Kandeepan, Ken (OFA)
Cc: LEE John -TREASURY; GRECO Clara -LAWDIV; LADAK Lubna -TREASURY; GO Matthew -TREASURY; LIU Sheen -TREASURY; WONG Leslie -LAWDIV; Thouin, Alena (ENERGY); Sawwaf, Khareem (ENERGY); Sud, Manu (ENERGY); Young, Graham (ENERGY)
Subject: RE: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Ken R.,

Thanks for your email, and the chat last Friday morning to clarify the proposed process for the first transaction. As you know it is important to Ministry to ensure that we follow the proper process at all times, particularly for the first transaction. Here is the proposed process as I understand it from our chat.

1) IESO asset to be transferred is the balance as of November 30. I understand the projected balance is ~$1.2B of which 44 per cent which will covered by the request for the equity injection.
2) On Dec 7 or 8, IESO will get confirmation of the November 30 balance and relay to OPG
3) On Dec 7 or 8, OPG to send Ministry of Energy an unofficial, unsigned Transfer Notice indicating the balance, and the amount requested for equity injection along with the Share Subscription form. This notice will be missing the closing date but all other information will be complete and accurate.
4) Ministry of Energy to commence reviewing the request on the assumption that a formal signed Transfer notice will be provided between Dec 12 –15.
5) Ministry of Energy to make formal request to the OFA under an MOU, once the formal signed Transfer Notice is received by the Ministry from OPG. Only once the formal signed Transfer Notice is received by the Ministry of Energy from OPG, will the 5 day period starts, but we will endeavour to expedite, although only 2 of the 5 days are under our control.
6) OFA staff to process the payment within three business days as per the terms of the MOU and wire funds to the appropriate account as per the MOU

From a Ministry of Energy perspective, we are ok with the above approach for this transaction. Our main concern, legal and policy, is ensuring that we have the formal signed Transfer Notice in hand before making any request to the OFA.

I understand that the closing date of the equity injection is the same as the closing date for the external financing which makes it challenging to provide the formal Transfer Notice within the 5 days. Going forward, you mentioned the warehousing facility may help with this timing issue.

Mike M and Ken K may have additional comments from an OFA perspective.
Shruti

Shruti Talwar
Director, Strategic Policy and Analytics Branch
Strategic, Network and Agency Policy Division
Ontario Ministry of Energy
416.325-8698
shruti.talwar@ontario.ca

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: November 23, 2017 1:26 PM
To: Talwar, Shruti (ENERGY); Manning, Mike (OFA); Kandeepan, Ken (OFA)
Cc: LEE John -TREASURY; GRECO Clara -LAWDIV; LADAK Lubna -TREASURY; GO Matthew -TREASURY; LIU Sheen -TREASURY; WONG Leslie -LAWDIV
Subject: Preliminary notice of first asset purchase and debt issuance under Fair Hydro Program

Shruti / Mike / Ken K,
Just wanted to give you a preliminary notice of expected funding requirements over the next month to facilitate the first purchase of the asset from the IESO and corresponding debt issued by the Trust, a part of which is supported by the equity injection from the Province. A formal notice will be provided in accordance with the relevant processes but given that this is the first transaction during a month when many people are away then we are providing this preliminary notice to help with lining up the relevant approvals.

The timing of the asset purchase will correspond to the debt issuance by the Trust. The exact timing will depend on completing the items required to market to investors – program documents and credit rating are the key elements.

In terms of dollar amount we anticipate the Trust purchasing the entire variance account balance. This is expected to be about $1.2 billion. As of the end of October, the account is just over $1 billion. It is expected that the senior debt for this first transaction will be both term debt and warehouse debt.

Since this is the first transaction in this structure and there are a number of moving parts at the current time then we will need to have some flexibility on the 5 business day requirement between notification and funding. One of the challenges is to include the Transfer Notice as part of the request for the equity since there is a similar 5 business day notice requirement. We may need to issue the equity request without the Transfer Notice attachment which would follow shortly after.

At the current time the expected dates are:
Pricing of term debt issuance – current target is sometime between Dec 12 to 15
Closing of debt issuance – Dec 19 to 22 (standard for securitization is T+5)

Closing date would correspond to the date for OPG to issue Class A shares to the Province in exchange for the corresponding funding from the Province.
Thanks,
Ken R

THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying,

conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

From:	Ronald Kwan
To:	John Kim
Cc:	Deena Padamadan; Usman Zahid
Subject:	RE: Questions
Date:	Wednesday, August 30, 2017 10:28:34 PM
Attachments:	CQSD Questions_v2.docx

Hi John,

I'm not sure if I did send you this, as I only made some edits to a couple of the A's.

Ron

From: John Kim
Sent: August-24-17 4:04 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Questions

Pls. see attached quick draft.

From: Ronald Kwan
Sent: Thursday, August 24, 2017 2:52 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Questions

Hi John,

Please draft some responses.

Thanks,
Ron

From: Anna Strathy
Sent: August-24-17 14:15
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Questions

Hi Ron,

We've received the following questions from CQSD and they'd like us to address Q's 1-3. Should I distribute to MOF legal (Malle?) for question 3? I'm not sure what sort of answer we would provide for the first two.

I've asked what the ultimate purpose of these questions are, but no response yet.

Thanks,
Matt

From: Reiss, Anthony (MOF) [mailto:Anthony.Reiss@ontario.ca]
Sent: Thursday, August 24, 2017 1:41 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Questions

Hi Matt,

Can you confirm the following 1 thru 3. I'm working on 4 and 5. If you have any questions please let me know.
Thanks,
Anthony

1) What is the urgency for tracking the September 26th board date?
2) Do you know if OFA has engaged the DMO/MO and if they are in agreement with tracking this board date?
3) Do we know when legal will be signing off on the submission?
4) What are the expectations around engaging/seeking MOE Minister signoff/agreement?
5) Has TBS indicated whether or not a MO-to-MO reach out will be required since this is blowing the 3-week rule?

Can you confirm the following 1 thru 3. I'm working on 4 and 5. If you have any questions please let me know.

Thanks,

Anthony

1) What is the urgency for tracking the September 26th board date?

   The Provincial Guarantee is a required part of the refinancing component of the Ontario Fair Hydro Plan (FHP) Act.

   The first bond issue by OPG Financing Entity is required to take place in the fall to meet the objectives of the FHP. To meet this timeline, OPG will need to engage the credit rating agencies in September, and the Provincial guarantee is a key part of the assessment by the rating agencies. OPG also needs time to market the bonds.

   Once the guarantee is in place, the Financing Entity will require finalization of various documents to support the bonds, undertake activities such as investor road shows, etc. As a result, the September timeline can be considered to be on the FHP's critical path.

2) Do you know if OFA has engaged the DMO/MO and if they are in agreement with tracking this board date?
   OFA staff are of the understanding that DMO/MO fully support the timely implementation of a provincial guarantee and the FHP and are kept informed of developments related to the implementation of the FHP, including this item.

3) Do we know when legal will be signing off on the submission?
   Legal sign off on the submission is part of the timelines. Legal staff in MOF and Energy are involved in the development of the Provincial guarantee, including reviewing the term sheet and as part of the normal sign-off process.

4) What are the expectations around engaging/seeking MOE Minister signoff/agreement?
   OFA staff understand that as contemplated under the Ontario Fair Hydro Plan Act, both the Minister of Finance and Minister of Energy would have to agree to the guarantee.

   Energy staff have been briefing the Minister of Energy on FHP implementation, and the provision for a PG was part of the OFHP Act, which was a Ministry

   Both M following an Order-in-Council. Energy staff are preparing to brief the Minister of Energy in the week of August 28, 2017.

5) Has TBS indicated whether or not a MO-to-MO reach out will be required since this is blowing the 3-week rule?
   While OFA staff are not aware of any discussions about the MO-to-Mo outreach to-date, it would be reasonable to assume that all MO's involved are aware of this item and the timeline involved.

From:	Ronald Kwan
To:	Marianne Nguyen (MCYS); Scott Nelms (ENERGY)
Cc:	Jonathan Tekle (CAB)
Subject:	RE: Quick chat...
Date:	Wednesday, June 14, 2017 10:38:22 AM

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From:	Ronald Kwan
To:	Marianne Nguyen (MCYS); Scott Nelms (ENERGY)
Cc:	Gavin He; Jonathan Tekle (CAB); Saad Baig (MOI-MTO); Elizabeth Mendes (MOF)
Subject:	RE: Quick chat...
Date:	Thursday, June 22, 2017 5:28:23 PM

Hi Marianne,

Energy Legal sent over its draft responses this morning to the MOF Legal and staff questions from a couple weeks ago, and they are being reviewed.

I understand that MOF Legal is providing one key point on the drafting of the indemnity itself, and I understand that Energy is working on revising its draft business case and other parts of the s.28 approval request submission. They'd have to run by OPG and IESO the latest version of the draft indemnity.

I'd expect they'd aim to get a signed submission to us as quickly as possible after that.

They are aware of the scheduled briefing with the Minister on Wednesday. Staff are working on the s.28 BN that we do, and the approvals package with MOF Legal.

Scott may have more to add.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-22-17 17:04
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Saad Baig (MOI-MTO) <Saad.Baig@ontario.ca>; Elizabeth Mendes (MOF) <Elizabeth.Mendes@ontario.ca>
Subject: FW: Quick chat...

Wondering how things have moved since the update last week.

FYI – I'm out of the office tomorrow. Saad is my back up.

From: Teliszewsky, Andrew (ENERGY)
Sent: June-22-17 4:48 PM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: Re: Quick chat...

Good Afternoon:

Wondering if we could circle back on this, please - this is becoming urgent and wondering if we can get confirmation of S.28 concurrence before Cabinet next week?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Wednesday, June 14, 2017 2:21 PM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Carys,

Unfortunately I am in Major projects at 11:30am and in a meeting with the Minister at 2pm.

Marianne is available at 11:30am if that works.

Thanks,
Liz

From: Baker, Carys (ENERGY)
Sent: June-14-17 10:35 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Liz,

This afternoon won't work but how about tomorrow at 11:30am or 2pm or Friday between 8-10am?

Thanks!

Carys

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)

Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: John Kim
To: Ronald Kwan
Subject: RE: Revised IESO Directive
Date: Friday, August 18, 2017 12:48:50 PM

Hi Ron,

We are confirming through TBS but wasn't planning to hold up the signing. The other concerns you have are already addressed in the latest versions we have.

I will look at the PRRT submission

John

From: Ronald Kwan
Sent: Friday, August 18, 2017 12:46 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Revised IESO Directive

Hi John,

Have you been able to confirm? Would Energy's Estimates be relevant, as well as the approved PRRT (we have a copy of the submission, which is of interest, but TBS staff may be best placed to talk to what was approved, or any supplementaries since PRRT).

And a few comments.

Ron

From: John Kim
Sent: August-18-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: John Kim
Sent: Friday, August 18, 2017 10:46 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: Lisa Stein
Sent: Friday, August 18, 2017 10:39 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: Revised IESO Directive
Importance: High

Hi Malle,

I've amended the directive to incorporate the original IESO credit facility agreement. Due to the evolution of the agreement (ie. numerous amendments and transition from the OPA to the IESO, I also thought it would be helpful to include background on this credit facility in the recitals. I would appreciate your feedback on this revised directive, as it is now more complex.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: John Kim
Subject: RE: Revised IESO Directive
Date: Friday, August 18, 2017 12:45:43 PM
Attachments: DIRECTIVE Aug 16_Markup.docx

Hi John,

Have you been able to confirm? Would Energy's Estimates be relevant, as well as the approved PRRT (we have a copy of the submission, which is of interest, but TBS staff may be best placed to talk to what was approved, or any supplementaries since PRRT).

And a few comments.

Ron

From: John Kim
Sent: August-18-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: John Kim
Sent: Friday, August 18, 2017 10:46 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: Lisa Stein
Sent: Friday, August 18, 2017 10:39 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: Revised IESO Directive
Importance: High

Hi Malle,

I've amended the directive to incorporate the original IESO credit facility agreement. Due to the evolution of the agreement (ie. numerous amendments and transition from the OPA to the IESO, I also thought it would be helpful to include background on this credit facility in the recitals. I would

appreciate your feedback on this revised directive, as it is now more complex.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

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 ("Minister").

Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, and December 18th, 2013, the Minister approved and directed the OFA to make loans (the "Advances") to the Ontario Power Authority (the "OPA") from time to time in an aggregate amount not to exceed $975 million at any time, as considered necessary by the OPA to meets its purposes.

Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the "Amalgamation") with the name Independent Electricity System Operator ("IESO").

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the "Original Credit Facility Agreement").

The IESO had requested a new revolving credit facility in an amount of up to $2 billion from the OFA to support the IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"). In the same request, the IESO had requested a reduction to its existing credit facility from the current $975 million to $475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the "2017 Directive"), the OFA was directed to provide a new revolving credit facility to the IESO for the purposes of providing short to medium term financing related to the IESO's role in the implementation of the OFHP Act (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, ~~th~~an intercept provision would ha~~s~~ve no application for OFA loans to the IESO.

Commented [LS1]: Program area please confirm accuracy of directives.

Commented [RK2]: Should there also be a pursuant to paragraph on the 2016 directive for the $975 M facility, now to the new IESO?

Commented [RK3]: Why isn't the directive from 2016 also referenced above?

Commented [LS4]: Amended as per Malle's comments. Program area please confirm.

Commented [RK5R4]: Would it be helpful to use "Estimates"-type terminology, such as "eperating expense" funding instead?

Commented [RK6R4]: And have we confirmed?

DRAFT

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

a) the Original Credit Facility Agreement, as may be amended from time to time; and,
b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the "IESO Credit Facility Agreements")

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated , 2017

Charles Sousa

Minister of Finance

DRAFT

From: Ronald Kwan
To: John Kim
Subject: RE: Revised IESO Directive
Date: Friday, August 18, 2017 1:03:24 PM

Thanks John,

It seemed to me that the IESO was shown as zeroes, but a closer look and a confirmation from TBS would be needed.

Ron

From: John Kim
Sent: August-18-17 12:49
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Revised IESO Directive

Hi Ron,

We are confirming through TBS but wasn't planning to hold up the signing. The other concerns you have are already addressed in the latest versions we have.

I will look at the PRRT submission

John

From: Ronald Kwan
Sent: Friday, August 18, 2017 12:46 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Revised IESO Directive

Hi John,

Have you been able to confirm? Would Energy's Estimates be relevant, as well as the approved PRRT (we have a copy of the submission, which is of interest, but TBS staff may be best placed to talk to what was approved, or any supplementaries since PRRT).

And a few comments.

Ron

From: John Kim
Sent: August-18-17 10:48
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: Revised IESO Directive

Importance: High

Fyi.

From: John Kim
Sent: Friday, August 18, 2017 10:46 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: FW: Revised IESO Directive
Importance: High

Fyi.

From: Lisa Stein
Sent: Friday, August 18, 2017 10:39 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: Revised IESO Directive
Importance: High

Hi Malle,

I've amended the directive to incorporate the original IESO credit facility agreement. Due to the evolution of the agreement (ie. numerous amendments and transition from the OPA to the IESO, I also thought it would be helpful to include background on this credit facility in the recitals. I would appreciate your feedback on this revised directive, as it is now more complex.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
To: Ronald Kwan
Subject: Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date: Friday, August 18, 2017 3:26:54 PM

Yes he is. Let Anna know we are coming up

Sent from my iPhone

On Aug 18, 2017, at 3:22 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> I'm heading back.
>
> Is Gadi still around?
>
> Ron
>
> On Aug 18, 2017, at 3:12 PM, John Kim <John.Kim@ofina.on.ca> wrote:
>
> > Sure, here it is.
> >
> > Would you be around to sign shortly?
> >
> > ---
> >
> > **From:** Ronald Kwan
> > **Sent:** Friday, August 18, 2017 2:54 PM
> > **To:** John Kim <John.Kim@ofina.on.ca>
> > **Subject:** Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
> >
> > Thanks John. I noticed that Lisa also copied over the extra zero later on too in "20015". Would you correct in the BN and Directive.
> >
> > Ron
> >
> > ---
> >
> > **From:** John Kim
> > **Sent:** August 18, 2017 2:02 PM
> > **To:** Ronald Kwan
> > **Subject:** RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
> >
> > Works for me. Just change tracked one thing in the attached.
> >
> > John

From: Ronald Kwan
Sent: Friday, August 18, 2017 1:48 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

<DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate vWOWatermark_vFinaClean.docx>

<01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean2.docx>

From: Ronald Kwan
To: John Kim
Subject: Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date: Friday, August 18, 2017 3:22:03 PM

Hi,

I'm heading back.

Is Gadi still around?

Ron

On Aug 18, 2017, at 3:12 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Sure, here it is.
>
> Would you be around to sign shortly?
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, August 18, 2017 2:54 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
>
> Thanks John. I noticed that Lisa also copied over the extra zero later on too in "20015". Would you correct in the BN and Directive.
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** August 18, 2017 2:02 PM
> **To:** Ronald Kwan
> **Subject:** RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
>
> Works for me. Just change tracked one thing in the attached.
>
> John
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, August 18, 2017 1:48 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

<DIRECTIVE Aug 16 (vAug18LisaMallesSignedOff)_clean Alternate

vWOWatermark_vFinaClean.docx>

<01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean2.docx>

From: Ronald Kwan
To: John Kim
Subject: Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx
Date: Friday, August 18, 2017 2:54:30 PM

Thanks John. I noticed that Lisa also copied over the extra zero later on too in "20015". Would you correct in the BN and Directive.

Ron

From: John Kim
Sent: August 18, 2017 2:02 PM
To: Ronald Kwan
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Works for me. Just change tracked one thing in the attached.

John

From: Ronald Kwan
Sent: Friday, August 18, 2017 1:48 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Some suggestions.

Ron

From: John Kim
Sent: August-18-17 12:22
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Fyi, we will provide both versions of the note and let you pick.

From: Lisa Stein
Sent: Friday, August 18, 2017 12:15 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>;

Kenneth Russell <Kenneth.Russell@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: 01 - IESO-OFA - FHP LoC - Intercept Directive v10.docx

Hi John,

Please see the attached draft briefing note, with my suggested amendments (primarily to remain consistent with the revised directive).

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
To: Ronald Kwan
Subject: Re: 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx
Date: Tuesday, September 19, 2017 6:24:52 PM

Shorter is great, thanks

Sent from my iPhone

On Sep 19, 2017, at 5:51 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> How about a much shorter BN?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** September-19-17 16:30
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Subject:** 01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean.docx
>
> Hi Ron,
>
> Pls. see attached draft, based on the earlier note.
>
> S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package\Intercept Inclusion Option
>
> Thanks,
>
> John
>
> <01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean4Clean_Markup.docx>

From:	Ronald Kwan
To:	John Kim
Cc:	Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject:	Re: A note on IESO-OFA credit facility
Date:	Tuesday, December 05, 2017 5:27:37 PM
Attachments:	IESO Facility - BN v11_Markup.docx

Thanks John.

Will you be able to get more from OPCD on why there is no fiscal issue with the IESO drawing on the OFA facility for this purpose?

Ron

From: John Kim
Sent: December 5, 2017 2:36 PM
To: Ronald Kwan
Cc: Usman Zahid; Gavin He; Shajee Kathirgamanathan
Subject: RE: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached latest draft.

Thanks,

John

From: Ronald Kwan
Sent: Monday, December 04, 2017 7:25 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: A note on IESO-OFA credit facility

Hi John,

Some preliminary comments and suggestions.

Ron

From: John Kim
Sent: December-04-17 14:55

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: A note on IESO-OFA credit facility

Hi Ron,

Pls. see attached. In a separate call attended by EFB staff, Anthony confirmed our understanding. He indicated that they have consulted OPCD.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

IESO FAIR HYDRO PLAN CREDIT FACILITY
INTENDED USE – DISCUSSION WITH ENERGY STAFF

In a discussion with Energy staff [following comments heard in a call to discuss the Change of Law Protection Agreement call on December 1, 2017], Corporate and Electricity Finance Division (CEFD) staff became aware of ~~an additional~~one aspect of the use of the Ontario Financing Authority (OFA) $2 billion credit facility for the Independent Electricity System Operator (IESO) developed for the implementation of the Fair Hydro Plan (FHP).

For the "moratorium" period of the FHP where the customer bill increases are to be kept to the rate of inflation, the described plan would use the $2 billion credit facility provided by the OFA to cover interest costs and fees charged by the Fair Hydro Plan Trust (OPG Trust) to the IESO [TBC].

Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interest~~s~~ at the end of the moratorium period.

Furthermore, it is unclear how the IESO would [generate funds to] pay ~~back the credit facility and~~ the associated interest costs to the OFA for ~~these~~ drawdowns of the $2 billion credit facility; i.e., ratepayer recovered on an ongoing basis or be capitalized and paid off after the moratorium period.

Commented [SK1]: Wouldn't the CEA payments after the moratorium period pay back the facility. Just want to highlight that there are interest costs to be paid to the OFA during the moratorium period and unclear how those funds would be generated.

Commented [JK2R1]: It is most likely CEA but I think uncertainty remains?

Commented [GH3R1]: I moved this question to fiscal impact section below.

CONTEXT

The Independent Electricity System Operator (IESO) requested and ~~put in place~~entered into a revolving credit facility for an amount of up to $2 billion from the 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 obtained a Lending Directive from the Minister of Finance on June 29, 2017.

- The $2 billion IESO FHP-related facility was requested with an initial term of 5-years plus a contingency of three months (effectively expiring on September 30, 2022).
- The request in part enabled the IESO to have the facility beyond the initial moratorium period of customer bill increases being constrained by the rate of inflation.

In the briefing note outlining CEFD and other OFA staff recommendation to the Minister of Finance, there were three rationales ~~were~~ provided ~~to enact~~for the requested $2 billion credit facility:

- One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.
- At the time of initial consideration, it was ~~often~~also discussed that under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which led to discussions around how it could result in longer than planned IESO draws on the credit facility and a large balance accumulating in the facility.

Formatted: Indent: Left: 0.25"

- In the recommendation, staff referenced the need to allow the IESO to finance short to medium term funding shortfalls in its role in the FHP. It was always anticipated that there would be short and medium term timing differences in funding as mentioned in the Briefing Note as part of the Minister's Directive Package (see the actual wording below):

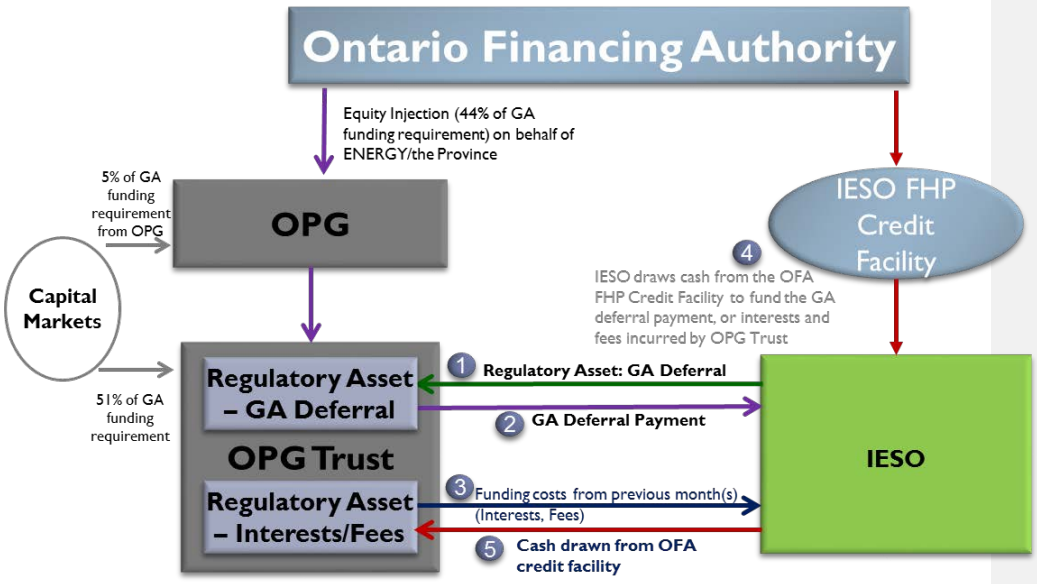
  This will help the IESO to fulfil the commitments under the OFHP Act as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

- ~~One of the primary reasons for putting in place a fairly large credit facility was to manage the initial transition as OPG Trust was not anticipated to be established nor able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017. Currently OPG Trust is expected to start using its own warehousing facility on December 18, 2017 for the first time. To this end, the facility served this intended roles effectively as it is maintaining the deferred GA portion in this facility currently.~~

INTENDED USE OF THE FHP-RELATED FACILITY

As in many policy initiatives, the program parameters continue to evolve for a number of FHP-related items, including the use of the $2 billion OFA facility for the IESO. Energy staff indicated that in order to facilitate the implementation of the FHP, the IESO will likely utilize the $2 billion OFA credit facility to defer the interest cost and fees component of the global adjustment (GA) deferral for the first 4 years of the FHP when the customer bills are to increase only by the rate of inflation.

See the diagram below for details of how the deferral of the interest cost and fees would occur in parallel to the deferral of the GA amounts:



1. *IESO calculates the total amount of GA deferral for the month*
2. *OPG pays the GA deferral amount to the IESO*
3. *OPG calculates the total ~~funding costs~~interest cost and fees ~~,(i.~~e.g., interest~~s~~, management fees, ~~and~~ etc., for the previous month), and send~~s~~ the invoice to the IESO*
4. *IESO draws cash from the OFA FHP Credit Facility to pay for the funding costs incurred by OPG Trust. IESO could use the credit facility to pay for the GA deferral amount as well in case of a shortfall*
5. *IESO prepares the Regulatory Assets, which consist of the GA deferral amount for the month and payment for the funding costs for the previous month, and sells the Regulatory Assets to OPG Trust.*

ANALYSIS

The ~~main intended~~ use of the credit facility~~'s role~~ to specifically fund interest cost and fees for the first four years is a ~~new~~relatively recent development for the intended use of the facility.

Short to medium term funding shortfalls were~~, at times,~~ always expected to be financed by this facility, as there would be potential timing differences each monthly settlement period and the OPG trust is not required to purchase the regulatory asset. In addition, ~~and~~ there were explicit discussions about the potential for market interruptions that could lead the IESO to be required to finance~~hold on to~~ deferrals related to the GA refinancing.

A systemic use of the facility for funding interest costs and fees for the first four years, while ~~is~~ a ~~new~~relatively recent development/understanding for CEFD staff, it could be seen as consistent with the purpose of the facility to support the IESO in managing short and medium term timing differences and the OPG financing entity's potential constraints in providing financing.

As the borrowing to fund interest cost and fees would only begin to be paid off after the initial moratorium period, the accumulation of interest cost and fees in the $2 billion credit facility would lead to decreased room for future GA deferral/borrowing needs. As such there may be a request for an expansion to the credit facility in the future. This is not expected to be likely in the ordinary course of operations of the FHP, as the otherwise largest purpose of the facility was to provide financing in the initial period before the OPG financing entity was fully established and able to acquire the regulatory asset.

FISCAL IMPACT~~iscal Impact~~

OPCD would need to opine on the potential fiscal impacts [TBC] of this funding structure due to the ongoing and cumulative nature of the funding of ~~fees and~~ interest cost~~s~~ and fees via the $2 billion credit facility.

If the IESO draws cash from the FHP credit facility to fund interest cost and fees for the first four years, it's unclear how and when IESO will pay back the credit facility~~,~~; i.e., OPG creates an account payable, or equivalent, to the IESO for the cash received, and pays it back when the collection of Clean Energy Adjustments starts.

[IESO staff indicated that they have consulted with OPCD staff on the accounting structure of such intended use of the IESO FHP credit facility, and there won't be a fiscal impact to the Province as it was set out via regulation. CEFD staff is getting clarification from OPCD on this.]

Without a mechanism to link the interest costs and fees back to the ratepayers, there could be fiscal implications related to such costs.

~~Preliminary estimates from Energy materials could indicate an accumulation of approximately $1.2 billion in interests at the end of the moratorium period.~~

~~Furthermore, it is unclear how the IESO would pay the interest costs to the OFA for these drawdowns of the $2 billion credit facility; i.e., ratepayer recover on an ongoing basis or be capitalized.~~

Commented [RK4]: Need more elaboration on this – options?

BACKGROUND

MINISTER'S DIRECTIVE

On June 29, 2017, Minister of Finance's Lending Directive authorized 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 also included 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, consistent with the spread for current and past OFA credit facilities for the IESO.

- The credit facility agreement shall be subject to such other terms as the OFA deems appropriate from time to time.

  - This standard clause in the Minister's Directive was utilized recently to allow for changes to the definition of the Permitted Liens and other related sections of the OEFC lending agreements.

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 funds provided to the IESO under the facility, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.

- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If the IESO cannot sell the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017* to a financing entity as per the Act, the IESO will have this revolving debt that can only begin to be repaid once ratepayers begin to pay down the deferred GA amount.

FHP ACT

- 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 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 right to recover the deferred amounts in the future) to a financing entity.
  - It is anticipated that the regulatory asset will be purchased by the financing entity to be established by OPG (OPG Trust).
  - The cash received from selling the regulatory asset will be used by the IESO to fund the incurred GA shortfall.
  - For the first four years, it [now] appears that part of the deferred amounts related to ~~carrying costs~~ interest cost and fees would be funded through IESO's facility from the OFA.

- The IESO had always been expected to need short-term financing to manage initial and ongoing monthly IESO cash flow requirement timing differences.
  - Even once the OPG Trust is fully set up to borrow, there is expected to be continued timing differences between the IESO's monthly settlement process when it has to pay generators and when the Trust purchases the asset from IESO.
  - Also, under the legislation, OPG Trust is not required to purchase any portion of the regulatory asset, which could result in longer than planned IESO draws on the credit facility, and an accumulation of a larger balance in the facility.

OFA FACILITIES FOR IESO

- An existing credit facility between the IESO and the OFA is currently available for $475 million (previously $975 million), which includes support for the current Regulated Price Plan (RPP) program. The IESO has proposed that a separate 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 reflects that the FHP prices for eligible consumers is being implemented through the setting of prices under the RPP.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

Existing OFA-IESO Facility	New Proposed OFA-IESO FHP Facility

Pre-Existing 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**

- The OFA facilities provided to the IESO currently have the intercept provision as required under the OFA's Lending Policy, dated April 16, 2010. The pre-existing $975 million facility (now the $475 million facility) was amended to incorporate the required intercept provision. The intercept provision is intended to provide security to the OFA in its role as a lender to public bodies.

IESO

- 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
December 4, 2017

From: Gadi Mayman
To: Ronald Kwan
Subject: Re: ARMC FHP Deck
Date: Sunday, June 11, 2017 8:19:19 PM

Thanks, that's a very good deck. I wouldn't fuss about getting it any more perfect than it already is, as my experience with our ARMC members is that they'd rather have material well in advance so that they have time to read it and understand it before it's presented at the meeting.

I don't know if you're aware, but the AG is planning to be at the beginning of both ARMC and the Board meeting, so if she decides to stay in between, she'll be in attendance for your presentation.

Gadi

From: Ronald Kwan
Sent: Sunday, June 11, 2017 7:31 PM
To: Gadi Mayman
Subject: ARMC FHP Deck

Hi Gadi,

As it was suggested that there be a presentation on the FHP for the OFA Board/ARMC, attached is a work-in-progress deck.

It does not get into great detail, outlining the elements of the FHP, with a bit more on the GA financing structure and the OFA touchpoints on borrowing for the equity injection and notes the credit facility for IESO. Risks are also high-level, and it does not get into accounting risk, leaving that discussion as one between the AG and Province, as was positioned at the OEFC AC. I might think there may be verbal discussions.

Comments welcome.

Thanks,

Ron

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim; Shajee Kathirgamanathan; Gavin He
Subject: Re: ARMC FHP deck
Date: Saturday, June 10, 2017 10:34:53 AM

Ok thanks Ron

Will make revisions.

Bruno

Sent from my iPhone

> On Jun 10, 2017, at 7:00 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> Hi Bruno,
>
> Thanks. Looks good.
>
> I made a few more suggested text edits – please review.
>
> I was also thinking about a couple changes to the flow charts. One to add in the OEB (as such, some suggested relabelling of the ABC's etc.), and the other is to put the Trust up on top, so switching the order. Please take a look.
>
> Ron
>
> From: Bruno Amara
> Sent: June-09-17 4:07 PM
> To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: ARMC FHP deck
>
> Hi Ron
>
> The attached deck is revised per your edits and comments. Slide 12 is a combination of a slide you had edited to explain the financial structure and the chart which you were wondering if it was needed. We thought it worked to combine the two to help explain the structure. But we can remove chart if you prefer to go without it.
>
> Added some notes to Note pages for equity injection and IESO credit facility slides.
>
> Thanks
> Bruno
>
>
>
> Bruno Amara
> Sr. Manager, Financial and Regulatory Analysis
> Electricity Finance Branch
> Corporate and Electricity Finance Division
> Ontario Financing Authority
>
> Tel: 416-325-1489
> Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>

>
> <OFA ARMC - FHP Briefing (2017 06 01 v17_clean)_Markup.pptx>
> <OFA ARMC - FHP Briefing (2017 06 01 v18_clean).pptx>

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim; Shajee Kathirgamanathan; Gavin He
Subject: Re: ARMC FHP deck
Date: Sunday, June 11, 2017 9:20:02 PM

We will add third line and review deck again

Thx

Sent from my iPhone

> On Jun 11, 2017, at 2:15 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> Thanks Bruno. Good point on “illustrative”. I added it in on a few slides. Other suggested places?
>
> WRT slide 13, I think Energy wanted to make a point showing the three lines in its May report back, so it might be good to reflect that in the deck.
>
> I also made a few other edits, as attached.
>
> Ron
>
> From: Bruno Amara
> Sent: June-11-17 1:43 PM
> To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> Cc: John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: ARMC FHP deck
>
> Hi Ron
>
> Thanks. I think your edits work. I suggested a couple of minor edits on slide 12 (last couple of bullets). As an option we could leave the financing details out of Slide 12 as they are reviewed on slide 14 as well.
>
> Also See my comments on slide 13 to answer your questions.
>
> Last general comment - although I haven’t proposed edits in attached markup - is to add “Illustrative” to some of the slide titles where we present numbers to make clear that these are estimates based on certain assumptions.
>
> Thanks
> Bruno
>
>
> From: Ronald Kwan
> Sent: Saturday, June 10, 2017 4:46 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: ARMC FHP deck
>
> Hi Bruno,
>
> Thanks. Looks good.

>
> I made a few more suggested text edits – please review.
>
> I was also thinking about a couple changes to the flow charts. One to add in the OEB (as such, some suggested relabelling of the ABC's etc.), and the other is to put the Trust up on top, so switching the order. Please take a look.
>
> Ron
>
> From: Bruno Amara
> Sent: June-09-17 4:07 PM
> To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: ARMC FHP deck
>
> Hi Ron
>
> The attached deck is revised per your edits and comments. Slide 12 is a combination of a slide you had edited to explain the financial structure and the chart which you were wondering if it was needed. We thought it worked to combine the two to help explain the structure. But we can remove chart if you prefer to go without it.
>
> Added some notes to Note pages for equity injection and IESO credit facility slides.
>
> Thanks
> Bruno
>
>
>
> Bruno Amara
> Sr. Manager, Financial and Regulatory Analysis
> Electricity Finance Branch
> Corporate and Electricity Finance Division
> Ontario Financing Authority
>
> Tel: 416-325-1489
> Email: bruno.amara@ofina.on.ca<mailto:bruno.amara@ofina.on.ca>
>
> <OFA ARMC - FHP Briefing (2017 06 01 v18_mark-up2.pptx>
> <OFA ARMC - FHP Briefing (2017 06 01 v19.pptx>

From:	Gavin He
To:	Joan Dougherty
Cc:	Ronald Kwan; Anna Strathy; Sarah Neville
Subject:	Re: Action item from the April ARMC / Board meetings
Date:	Wednesday, May 17, 2017 6:42:46 PM

Hi Joan,

Thanks! Anna reached out to us yesterday too and CEFD is working on preparing the materials for the ARMC meeting in June.

Regards,
Gavin He

On May 17, 2017, at 6:17 PM, Joan Dougherty <Joan.Dougherty@ofina.on.ca> wrote:

> Hi Ron
>
> As a result of discussions at the April ARMC meeting, Bonnie Lysyk suggested that the Board consider obtaining a briefing on the Fair Hydro Plan. Angela Holtham, ARMC Chair, raised it at the April Board meeting and they agreed that they would benefit from a briefing, preferably, at the June 16th meeting. Please give us your feedback at your earliest convenience.
>
> Regards
>
> _____
> Joan Dougherty
> Ontario Financing Authority
> 1 Dundas Street West
> 12th Floor
> Toronto, Ontario, M7A 1Y7
> Tel: 416-325-8833
> Fax2mail: 416-204-6674
> Fax: 416-327-9302

From: Sarah Neville
To: Gavin He
Cc: Joan Dougherty; Ronald Kwan; Anna Strathy
Subject: Re: Action item from the April ARMC / Board meetings
Date: Wednesday, May 17, 2017 8:26:38 PM

Great, thanks! We wanted to get this on the radar as it was a little out of the norm.

Best regards,

Sarah

On May 17, 2017, at 6:42 PM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Joan,
>
> Thanks! Anna reached out to us yesterday too and CEFD is working on preparing the materials for the ARMC meeting in June.
>
> Regards,
> Gavin He
>
> On May 17, 2017, at 6:17 PM, Joan Dougherty <Joan.Dougherty@ofina.on.ca> wrote:
>
> > Hi Ron
> >
> > As a result of discussions at the April ARMC meeting, Bonnie Lysyk suggested that the Board consider obtaining a briefing on the Fair Hydro Plan. Angela Holtham, ARMC Chair, raised it at the April Board meeting and they agreed that they would benefit from a briefing, preferably, at the June 16th meeting. Please give us your feedback at your earliest convenience.
> >
> > Regards
> >
> > _____
> Joan Dougherty
> Ontario Financing Authority
> 1 Dundas Street West
> 12th Floor
> Toronto, Ontario, M7A 1Y7
> Tel: 416-325-8833
> Fax2mail: 416-204-6674
> Fax: 416-327-9302

From: Ronald Kwan
To: Gavin He
Subject: Re: Briefing Deck Copies
Date: Thursday, June 29, 2017 9:36:19 AM

Thanks Gavin. That's a good number.

Ron

From: Gavin He
Sent: June 29, 2017 9:20 AM
To: Ronald Kwan
Subject: RE: Briefing Deck Copies

Hi Ron,

I made extra 5 copies of each package. John and Bruno will bring them to the briefing.

Please let me know if you need anything else.

Regards,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 6:43 PM
To: Gavin He <Gavin.He@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Thanks Gavin.

Would you or others print a few extra copies of the approvals packages to have at the briefing, and send me the final soft copies too.

Also, would you send the final soft copies to Vivienne for Nancy and Scott N's information.

Ron

From: Gavin He
Sent: June-28-17 18:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Subject: RE: Briefing Deck Copies

Hi all,

Just a quick status update on the items for tomorrow's briefing:

- The attached final version of the briefing deck has been provided to DMO, and I told DMO that CEFD will bring hard copies of the deck.
- Outstanding approval packages:

1. Minister's Directive for IESO Credit Facility – the package is with DMO. DMO is also getting confirmation on the OIC approval (it should have been signed but they are just waiting for the confirmation).
2. IESO Treasury Policy – The package has been provided to DMO.
3. Section 28 approval for OPG and IESO Indemnity Agreements – The package has been provided to DMO.

- Jonathan will forward soft copies of the approval packages to MO. He also noted that we should be prepared to walk the Deputy and the Minister through the approval packages.

Please let me know if you have any questions.

Thanks,
Gavin He

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Thanks Bruno -- 20 copies should be more than enough.

Ron

From: Bruno Amara
Sent: June-28-17 17:44
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Briefing Deck Copies

Ron

Here is final with draft removed.

I'll bring copies. I don't have invitation, but I'll print 25 copies.

Bruno

From: Ronald Kwan
Sent: Wednesday, June 28, 2017 5:39 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: Briefing Deck Copies

Hi,

Would you be printing and bringing copies of the deck to Frost tomorrow morning?

Would you send me the 'final' version, with 'draft' removed.

Thanks,
Ron

From:	Ronald Kwan on behalf of /O=OFA/OU=OFINA ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RKWAN
To:	Gadi Mayman; Ken Kandeepan
Cc:	David McLean (MOF); Anna Strathy; Gavin He
Subject:	Re: CBN Fact Check
Date:	Tuesday, June 13, 2017 3:00:01 PM

Hi Gadi,

Just as a clarification, we don't need a regulation for the OIC to expand the IESO credit facility.

There are regs being brought forward by Energy that do affect IESO, including one on its requirements on treasury / investment policies. That does affect the affect the Minister of Finance in that the IESO has to amend its treasury policies for the FHP, and under the regulation, the Minister of Finance has to approve the IESO's policies. There should be an approval request coming forward.

Ron

From: Ronald Kwan
Sent: June 8, 2017 12:33 PM
To: Gadi Mayman; Ken Kandeepan
Cc: David McLean (MOF); Anna Strathy; Gavin He
Subject: RE: CBN Fact Check

Hi Gadi,

As a comment, yes, no reg is needed for the OFA-IESO credit facility, but you've seen the OIC package to expand the OFA's borrowing room from the Province under CIPA to allow for the expanded credit facility. That's still tracking for the 27th.

And I had understood from the Energy weekly that the Energy regs would not all be ready at once (note the list from the materials Energy sent yesterday, as attached, where only some are listed as ready – though I did not see the IESO borrowing one mentioned in the CBN, though listed as "ready"), so this would just be the first set (not that I have yet to see any of the actual proposed regs, just this CBN).

Ron

From: Anna Strathy
Sent: June-08-17 12:23
To: David McLean (MOF) <David.McLean@ontario.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>;

Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: CBN Fact Check

Hi David,

A few comments from us:

- Suggest a mention of accounting risks in the Fiscal subsection, particularly given the AG's stated position at Committee on this. May want to seek input from OPCD/TBS.
- Suggest including on page 6, as part of the objectives of the proposed regulations:
  - Details on how the interest on the Trust debt will be managed; and
  - The Clean Energy Adjustment as it relates to repayment from 2027 onwards.

Comments from CEFD will be relayed separately by Gavin.

Thanks, Anna

From: Ken Kandeepan
Sent: Thursday, June 08, 2017 11:34 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: CBN Fact Check

Anna/Gadi

Agree with Gadi's point re accounting risks. No need for regulations for both the guarantee and the new credit facility to IESO(confirmed with Malle). I would also suggest that the objectives of the proposed regulations spelled out on page 6 include:

- Details on how the interest on the Trust debt will be managed and
- The Clean Energy Adjustment as it relates to repayment from 2027 onwards.

Thanks

Ken k

From: Gadi Mayman
Sent: Thursday, June 08, 2017 11:04 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: CBN Fact Check

I find it interesting that in the Risks section there is a lengthy description of the constitutional risk in the Legal subsection, but there is no mention of the accounting risks in the Fiscal subsection, in spite

of the AG's stated position at Committee on this. I think that it's a gap that needs to be at least mentioned in the CBN, doesn't it?

I'm assuming, because it isn't mentioned anywhere in the CBN, that there are no regs required for the guarantees that Mike has been working on with Blakes and OPG? Also, our direction on the $2 billion line of credit for the IESO can be done independently of these regs?

Thanks,
Gadi

On Jun 8, 2017, at 10:46 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Latest CBN for review and fact check. Dave is looking for our comments by 1:30pm. Ron is also reviewing.
>
> ---
>
> **From:** McLean, David (MOF) [mailto:David.McLean@ontario.ca]
> **Sent:** Thursday, June 08, 2017 10:38 AM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Cc:** Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
> **Subject:** CBN Fact Check
>
> Hi Anna and Gavin,
>
> Attached is the latest CBN for Energy's OESP reg. It is tracking to June 27th as part of the first of two bundles of regulations required for the implementation of the Ontario Fair Hydro Plan.
>
> CO has a hard deadline of 2:00 today, so I'm wondering if you guys can please have your teams review and provide comments (if any) to me by 1:30?
>
> Thanks,
> Dave
>
> <REG-11477_ID49242_LRC_CBN- DRAFT- OFHP regulations v5.docx>

From: Ken Kandeepan
To: Ronald Kwan
Subject: Re: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 8:08:09 PM

Not sure I agree with you Ron, the reason the RPP facility is provided by the OFA is more happenstance than clear choice of the OFA over the OEFC.

At least that is my understanding, you may have more inside knowledge.

I am just a little reluctant to have the OFA which has little to do with the electricity market extend its exposure further. Unless there is very valid reason it will be difficult to explain to the OFA Board why the OEFC was excluded in favour of the OFA.

You are correct with regard to the minute, I saw that too but failed to raise the issue. And finally the language that I used in my email simply states "it may be appropriate". It's simply a suggestion that should be explored.

Thanks

Ken k

On May 11, 2017, at 5:35 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Ken,
>
> I might also note that it was already noted in the TB Minute to Energy's report back submission on the FHP onTuesday that the facility would be from the OFA.
>
> Gadi reviewed the Minute.
>
> Ron
>
> On May 11, 2017, at 5:23 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Ken,
> >
> > Not saying it could not fit into the mandate of OEFC, but I think there may be reasons to keep the FHP separate from OEFC.
> >
> > And, as the FHP is essentially targeted at the RPP-eligible, and its effectively the lower GA recovery in the RPP prices that IESO has to cover the gap for compared to its market settlement costs with generators, I think there is a good continuity link to having this continue as an OFA facility.

We had this discussion before, and it would have been better to have had this discussion again internally before raising it with the IESO.

Ron

From: Ken Kandeepan
Sent: May-11-17 17:18
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.

Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that

to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> <!--[if !supportLists]-->? <!--[endif]-->A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
> <!--[if !supportLists]-->? <!--[endif]-->This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
> <!--[if !supportLists]-->? <!--[endif]-->Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.
> <!--[if !supportLists]-->? <!--[endif]-->As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: Ken Kandeepan
Subject: Re: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 5:35:54 PM

Hi Ken,

I might also note that it was already noted in the TB Minute to Energy's report back submission on the FHP onTuesday that the facility would be from the OFA.

Gadi reviewed the Minute.

Ron

On May 11, 2017, at 5:23 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Ken,
>
> Not saying it could not fit into the mandate of OEFC, but I think there may be reasons to keep the FHP separate from OEFC.
>
> And, as the FHP is essentially targeted at the RPP-eligible, and its effectively the lower GA recovery in the RPP prices that IESO has to cover the gap for compared to its market settlement costs with generators, I think there is a good continuity link to having this continue as an OFA facility.
>
> We had this discussion before, and it would have been better to have had this discussion again internally before raising it with the IESO.
>
> Ron
>
> ---
>
> **From:** Ken Kandeepan
> **Sent:** May-11-17 17:18
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: DRAFT IESO FH credit letter
>
> Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.
>
> Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> <!--[if !supportLists]-->? <!--[endif]-->A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.

<!--[if !supportLists]-->? <!--[endif]-->This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.

<!--[if !supportLists]-->? <!--[endif]-->Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.

<!--[if !supportLists]-->? <!--[endif]-->As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas

<John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald.Kwan@ofina.on.ca
To: Ken Kandeepan
Subject: Re: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 5:35:25 PM

Hi Ken,

I might also note that it was already noted in the TB Minute to Energy's report back submission on the FHP onTuesday that the facility would be from the OFA.

Gadi reviewed the Minute.

Ron

On May 11, 2017, at 5:23 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Ken,
>
> Not saying it could not fit into the mandate of OEFC, but I think there may be reasons to keep the FHP separate from OEFC.
>
> And, as the FHP is essentially targeted at the RPP-eligible, and its effectively the lower GA recovery in the RPP prices that IESO has to cover the gap for compared to its market settlement costs with generators, I think there is a good continuity link to having this continue as an OFA facility.
>
> We had this discussion before, and it would have been better to have had this discussion again internally before raising it with the IESO.
>
> Ron
>
> ---
>
> **From:** Ken Kandeepan
> **Sent:** May-11-17 17:18
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: DRAFT IESO FH credit letter
>
> Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.
>
> Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> <!--[if !supportLists]-->? <!--[endif]-->A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.

<!--[if !supportLists]-->? <!--[endif]-->This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.

<!--[if !supportLists]-->? <!--[endif]-->Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.

<!--[if !supportLists]-->? <!--[endif]-->As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas

<John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: Ken Kandeepan
Cc: Mike Manning; John Psinas; John Kim
Subject: Re: DRAFT IESO FH credit letter
Date: Thursday, May 11, 2017 5:03:59 PM

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> - A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
> - This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
> - Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new facility to be granted by OEFC as opposed to the OFA.
> - As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From:	Ronald Kwan
To:	John Kim
Cc:	Deena Padamadan; Bruno Amara; Salman Qadir
Subject:	Re: DRAFT IESO FH credit letter
Date:	Thursday, May 11, 2017 10:53:35 AM
Attachments:	IESO_OFA FEP 2017 Credit Letter v3 draft_CEFDmarkup2.docx

Hi,

A few comments / suggested edits.

Ron

From: John Kim
Sent: May 11, 2017 10:25:38 AM
To: Ronald Kwan
Cc: Deena Padamadan; Bruno Amara; Salman Qadir
Subject: RE: DRAFT IESO FH credit letter

Hi Ron,

Pls. see attached.

John

From: John Kim
Sent: May-09-17 18:00
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: Fwd: DRAFT IESO FH credit letter

FYI, just looking at it myself

Begin forwarded message:

> **From:** Sarah Harris <Sarah.Harris@ofina.on.ca>
> **Date:** May 9, 2017 at 4:15:14 PM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>, Linda Smith <Linda.Smith@ofina.on.ca>, Opal Kandelas <Opal.Kandelas@ofina.on.ca>, Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject: FW: DRAFT IESO FH credit letter**
>
> Hello John,

I'm not sure if you've seen the attached letter as of yet. We have received this request from IESO to set-up a credit facility for IESO to borrow $1,500M to fund the Fair Hydro Program.

IESO indicates that they either wish to have the existing $975M credit facility between the OFA and IESO increased by $1,500M (incorporating their proposed provisions) or to have a separate $1,500M credit facility altogether. I'm aware that there have some discussions around this. Do you know if it has been decided if OFA or OEFC should provide this facility?

Thanks,
Sarah
5-8193

From: Opal Kandelas
Sent: Tuesday, May 09, 2017 11:54 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

From: Mike Manning
Sent: Tuesday, May 09, 2017 11:21 AM
To: Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: FW: DRAFT IESO FH credit letter
Importance: High

As discussed.
Mike

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 09, 2017 10:26 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

ieso
Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 8, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: **IESO Credit Requirements for the 2017 Fair Hydro Plan~~rogram~~**

Dear Mr. Mayman,

As you are aware the Ontario government has announced its inten~~s~~tion to implement the proposed Fair Hydro Plan~~program~~ (FHP) to reduce electricity prices for eligible consumers in the province. Proposed l~~L~~egislation ~~is expected to be~~was introduced this month for the program. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that to support the IESO's role in implementation it will need greater credit liquidity than currently exists.

The existing credit facility between the IESO and the Ontario Financing Authority~~'s~~ (OFA) is $975 million. The IESO proposes that an additional facility/commitment be provided in the amount of $1,500 million. This would enable the IESO to provide interim financing for the FHP's spreading out of global adjustment costs~~smoothing~~ for a period of several months, if needed.

We suggest the OFA's current $975 million agreement and the new separate (or co-mingled) FHP agreement consider the following key provisions:

- FHP: 5 year term to align with the FHP's initial period of deferral of electricity prices, ~~period~~ plus a few months of contingency (i.e., to September 30, 2022);
- FHP: interest charge to be Province's cost of funds for borrowing with a similar term as determined by OFA plus 0.25 per cent per annum;
- FHP: drawings to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers;
- Existing $975 million facility: draws to permit for FHP purposes until the credit agreement for FHP purposes has been made available; and

Commented [SQ21]: Please confirm that the requirement is $1.5 billion as it is preferred to keep the $975M separate from FHP.

Commented [SQ22]: It is preferred that a separate credit facility be set up for FHP purposes. OFA is working to obtain the appropriate approvals required. Option to use the existing facility may be exercised if timing does not permit putting in place a new credit facility.

Commented [KR(3]: Has CMD been consulted on this?

Commented [KR(4]: Overall, would it be better to purely separate out the FHP borrowing – so a larger than $1.5 bn new facility, and potentially shrink the existing $975 facility?

Commented [SQ25]: $975 million agreement is for purposes outlined under section 25.33 of the Electricity Act. Seems FHP would fall under that but legal to confirm.

- $975 million: a reduction in the 28 days minimum draw for the existing facility to a minimum of 7 days to a maximum of 95 days;

Commented [SQ26]: Subject to OFA Capital Markets.

Should the IESO find that there is persistent~~consistent~~ usage of these facilities we will contact the OFA for further arrangements.

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facility(ies) and we will provide such evidence for the OFA's records.

We appreciate the OFA's continue support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

DRAFT

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: Ronald Kwan
To: Ken Kandeepan
Subject: Re: DRAFT IESO FH credit letter
Date: Friday, May 12, 2017 8:21:51 AM

Hi Ken,

I raised many of the same considerations when the IESO request first came up, and a rationale could be put forward under various options. So, my response was not so much "my" position as where we are now, post TB and post-Cabinet (the Cabinet briefing note also included disclosure on the IESO request for financing from the OFA).

Energy and EIGS also asked, but also did not like the idea of any association with stranded debt (even if this would be net neutral on OEFC's balance sheet), and keeping the spread as tight as possible too.

The OEFC Board heard the same considerations, as I recall, though it was just part of the general discussion on the FHP, and the members were likely just taking in the information since the IESO request was not to OEFC.

It was also noted that a Minister's directive to the OFA would be required as part of this, so while the reasons why could be presented to the OFA Board, not sure it needs to be more than an info item.

And it is in part historical "happenstance" that the old OPA was not an Ontario Hydro successor corporation such that the current and historical faculty was done with the OFA as OPA was a public body, and thus that facility has a 25 vs 50 bps spread, providing an incentive for the new IESO to maintain the distinct facilities up to this point, and for its request wrt the FHP. But that is not just then historical, but has an impact going forward on the FHP.

Of course, a directive could be made to the OEFC instead, including on the spread (and potentially the DGF could be changed, or OEFC takes a loss). But a continuity evolution on the OFA facility has its positive considerations too for the current form of the ask from IESO.

Happy to discuss later this morning.

Ron

On May 11, 2017, at 8:08 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Not sure I agree with you Ron, the reason the RPP facility is provided by the OFA is more happenstance than clear choice of the OFA over the OEFC.
>
> At least that is my understanding, you may have more inside knowledge.
>
> I am just a little reluctant to have the OFA which has little to do with the electricity market extend its exposure further. Unless there is very valid reason it will be difficult to explain to the OFA Board why the OEFC was excluded in

favour of the OFA.

You are correct with regard to the minute, I saw that too but failed to raise the issue. And finally the language that I used in my email simply states "it may be appropriate". It's simply a suggestion that should be explored.

Thanks

Ken k

On May 11, 2017, at 5:35 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Ken,
>
> I might also note that it was already noted in the TB Minute to Energy's report back submission on the FHP onTuesday that the facility would be from the OFA.
>
> Gadi reviewed the Minute.
>
> Ron
>
> On May 11, 2017, at 5:23 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Ken,
> >
> > Not saying it could not fit into the mandate of OEFC, but I think there may be reasons to keep the FHP separate from OEFC.
> >
> > And, as the FHP is essentially targeted at the RPP-eligible, and its effectively the lower GA recovery in the RPP prices that IESO has to cover the gap for compared to its market settlement costs with generators, I think there is a good continuity link to having this continue as an OFA facility.
> >
> > We had this discussion before, and it would have been better to have had this discussion again internally before raising it with the IESO.
> >
> > Ron

From: Ken Kandeepan
Sent: May-11-17 17:18
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Good points though I believe that this falls within the mandate of OEFC which includes: "Providing financial assistance to the successor corporations of Ontario Hydro". Note that IESO already has a facility with OEFC and the only reason the RPP facility is with the OFA is because it was previously extended to the OPA and subsumed by IESO when the latter merged with the former.

Can we have a quick discussion on this tomorrow, not sure Mike will care as to which entity is providing the facility but if you do Mike pls join us.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 5:04 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: Re: DRAFT IESO FH credit letter

Hi Ken.

Leaving out IESO for now.

I think that there would be different challenges for this to be done through OEFC.

One is having this associated with OEFC's legacy mandate.

Another is the 50 bps DGF charged to OEFC. That may not come into play for any given period, but if it does, OEFC would either have to charge that to IESO to stay whole, or carve this out from the DGF requirement, which would be an

additional approval, and could raise the whole issue of why OEFC pays a DGF in the first place, or the appropriate size.

It would be in many ways simpler to have this facility provided by the OFA.

Ron

On May 11, 2017, at 4:55 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Anthony
>
> As discussed, while I have no comments in addition to what was already provided by both Mike and Ron, I would like to make the following clarifications:
>
> <!--[if !supportLists]-->? <!--[endif]-->A separate facility for the Fair Hydro Plan is preferable given that my understanding is all interest incurred in setting up the regulatory asset should be capitalized. As such, from a practical and operational perspective it will be much easier for IESO to draw upon a separate facility to fund the regulatory from the point it is set up to the eventual purchase by the Trust.
>
> <!--[if !supportLists]-->? <!--[endif]-->This will ensure that any interest incurred will be accurately capitalized and not be part of IESO's interest expenses, thus allowing the Province, upon consolidation with IESO, to offset its own interest expense relating to the provision of the credit facility.
>
> <!--[if !supportLists]-->? <!--[endif]-->Since a separate facility will be set up it may make sense to reduce the limit of the current facility with the OFA and increase the limit of the new one from the proposed $1.5 billion in IESO's draft memo. From a structural perspective it may also be appropriate for this new

facility to be granted by OEFC as opposed to the OFA.

<!--[if !supportLists]-->? <!--[endif]-->As stated in the comments to the memo the existing facility can be used on an interim basis until the new one is set up.

Thanks

Ken k

From: Ronald Kwan
Sent: Thursday, May 11, 2017 1:06 PM
To: Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: DRAFT IESO FH credit letter

Hi Anthony,

Staff had a few suggestions/comments.

As discussed on the last call, we had talked about it being cleaner to have a separate facility for the FHP. The draft letter seems to have a potential for IESO drawing both on the new facility and the existing one. While drawing on the existing facility might be needed on an interim basis, it would seem cleaner and more transparent to have that possibility only until a new, separate facility is in place.

Ron

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: May-09-17 10:26
To: Ken Kandeepan

<Ken.Kandeepan@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: DRAFT IESO FH credit letter

See attached draft letter we hope to issue this week – for your comments (will appreciate by Thursday this week if any).

I did speak with Moody's on April 28 to obtain their feedback.

Call me @ 905.403.6944 to discuss (…Ken can we discuss the interest exp/income flows when you have a moment).

As mentioned the current $975M supports the RPP today which will be transitioned to the new FH going forward – for this draft as discussed with my CFO I have left the $975M as is but will seek to use for FH too.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Deena Padamadan
Subject: Re: Delivered package to receptionist
Date: Wednesday, August 23, 2017 3:51:51 PM
Attachments: BN - IESO Credit Facility Expedite Request_mARKUP.docx

---

Hi John,

How about this?

Ron

From: John Kim
Sent: August 23, 2017 3:04 PM
To: Ronald Kwan
Cc: Deena Padamadan
Subject: RE: Delivered package to receptionist

Sorry, pls. use this version.

-----Original Message-----
From: John Kim
Sent: Wednesday, August 23, 2017 3:01 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Ron,

Pls. see attached short note.

Thanks,

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 12:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John & Ron,

From DMO: In preparation for Marianne's return next week, we should work to provide rationale on the timing and urgency of this, e.g. What are the risks of not setting this up until the Minister returns early September?

Given the topic, I think the MO would want our Minister to review but will check with Marianne.

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:43 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi Deena,

I'd let them know that it would ideally be signed early next week. Looping Ron in as well.

John

-----Original Message-----
From: Deena Padamadan
Sent: Tuesday, August 22, 2017 9:41 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: Delivered package to receptionist

Hi John,

DMO confirmed they have the package and plan to chat with Ron for more details on urgency and risks with timelines. They noted that Minister Sandals is away this week. Let me know if you have any other questions.

Thanks,
Deena

-----Original Message-----
From: John Kim
Sent: Tuesday, August 22, 2017 9:21 AM
To: Deena Padamadan <Deena.Padamadan@ofina.on.ca>
Subject: FW: Delivered package to receptionist

Hi Deena,

Could you follow up with Jonathan where things are on the IESO credit facility?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, August 21, 2017 1:14 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Delivered package to receptionist

HI John,

I signed off and Feriel delivered it to the DMO this morning.

Thanks.

Malle

-----Original Message-----
From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 18, 2017 4:44 PM
To: Hanslep, Malle (MOF)
Subject: FW: Delivered package to receptionist

Hi Malle,

We left it with reception at your office.

Thanks,

John

-----Original Message-----
From: Eden Amare
Sent: Friday, August 18, 2017 4:36 PM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Angie Georgakakos <Angie.Georgakakos@ofina.on.ca>
Subject: Delivered package to receptionist

Hello again,

I got a hold of the receptionist and gave her the package. She said she would put it on Malle's desk.

I did not call Malle.

Best,
Eden.

Sent from my iPhone

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

ONTARIO FINANCING AUTHORITY CREDIT FACILITY TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR TO SUPPORT THE FAIR HYDRO PLAN:

EXPEDITED REQUEST – PRESIDENT OF TREASURY BOARD AS ALTERNATE FOR MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE OFA LENDING POLICY INTERCEPT PROVISION

The Independent Electricity System Operator (IESO) requests the Ontario Financing Authority (OFA) to execute and put in place the OFA to IESO credit facility required for its role under the Ontario Fair Hydro Plan Act, 2017. On June 29, 2017, the Minister of Finance provided a Lending Directive to accommodate IESO's request.

As required by OFA's Lending Policy, the OFA is returning to request a Minister's direction to exempt from the requirement to include an intercept provision in the Ontario Fair Hydro Plan (OFHP) Credit Facility agreement, as well as the original credit facility agreement.

STATUS UPDATE

- IESO's treasury and pension staff has raised ~~a~~ significant concerns about not having the OFHP credit facility in place by the end of August 2017:
  - A ratings agency, Moody's, has raised its~~their~~ concern that the $2 billion facility has not been put in place.
  - Moody's main concern relates to the rapid utilization of the existing $975M facility at a rate of about $200-250M per month~~.~~ (the existing facility is being used, as expected, by the IESO on an interim basis until the new facility is in place).
  - Given that the first bond issuance by OPG's Financing Entity is not expected until ~~the October~~later in the fall ~~timeline~~, the timely execution of the OFA to IESO OFHP credit facility is of a significant concern.
    - ~~o~~ OPG's financing entity would use the proceeds from the bond issuance, as well as financing from OPG and, indirectly, the Province as shareholder, to purchase the regulatory asset from IESO, which would use the proceeds to pay down the draws on the OFA credit facility.
  - The timely execution of the OFHP credit facility is also an important priority of the IESO management and Board of Directors, with the expectation that a credit agreement would be in place by the end of August 2017.

RECOMMENDED NEXT STEP

- Request obtaining the Intercept Exemption Directive from the President of Treasury Board, as alternate for the Minister of Finance.

Formatted: Top: 0.81", Bottom: 0.31", Footer distance from edge: 0"

Formatted: 7. Bullet 3, Indent: Left: 0.75", Tab stops: 0.75", Left

Corporate and Electricity Finance Division
August 23, 2017

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He; John Kim
Subject: Re: Draft Materials | Cabinet & Committees Briefing
Date: Sunday, June 25, 2017 4:11:22 PM

Right. Thx

Sent from my iPhone

On Jun 25, 2017, at 2:27 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> Just a couple additional tweaks for terminology consistency.
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-25-17 10:37 AM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: Draft Materials | Cabinet & Committees Briefing
>
> Yes that works. Thanks
>
> Sent from my iPhone
>
> On Jun 25, 2017, at 1:48 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Bruno,
> >
> > How about this?
> >
> > Thanks,
> > Ron
> >
> > ---
> >
> > **From:** Bruno Amara
> > **Sent:** June-24-17 10:08 PM
> > **To:** Gavin He <Gavin.He@ofina.on.ca>
> > **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> > **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
> >
> > Hi Gavin

I have edited the OIC ($2B line of credit) explanation)

Bruno

From: Gavin He
Sent: Saturday, June 24, 2017 7:29 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed

from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP EFBedit_v2.pptx>

<32 20170627 Explainer (CAB) - FHP EFBedit_v3.pptx>

From: Gavin He
To: Ronald Kwan
Subject: Re: Draft Materials | Cabinet & Committees Briefing
Date: Sunday, June 25, 2017 12:37:22 PM

Hi Ron,

In the interest of time, would you like me to send our edits back to Brandon first? Or wait to see if there are any edits from SPFB on the resource revenue sharing slide?

Regards,
Gavin He

On Jun 25, 2017, at 10:36 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Yes that works. Thanks
>
> Sent from my iPhone
>
> On Jun 25, 2017, at 1:48 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Bruno,
> >
> > How about this?
> >
> > Thanks,
> > Ron
> >
> > ---
> >
> > **From:** Bruno Amara
> > **Sent:** June-24-17 10:08 PM
> > **To:** Gavin He <Gavin.He@ofina.on.ca>
> > **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> > **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
> >
> > Hi Gavin
> >
> > I have edited the OIC ($2B line of credit) explanation)
> >
> > Bruno
> >
> > ---
> >
> > **From:** Gavin He
> > **Sent:** Saturday, June 24, 2017 7:29 PM
> > **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> > **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim

<John.Kim@ofina.on.ca>
Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP EFBedit_v2.pptx>

From: Bruno Amara
To: Ronald Kwan
Cc: Gavin He; John Kim
Subject: Re: Draft Materials | Cabinet & Committees Briefing
Date: Sunday, June 25, 2017 10:36:55 AM

Yes that works. Thanks

Sent from my iPhone

On Jun 25, 2017, at 1:48 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Bruno,
>
> How about this?
>
> Thanks,
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-24-17 10:08 PM
> **To:** Gavin He <Gavin.He@ofina.on.ca>
> **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
>
> Hi Gavin
>
> I have edited the OIC ($2B line of credit) explanation)
>
> Bruno
>
> ---
>
> **From:** Gavin He
> **Sent:** Saturday, June 24, 2017 7:29 PM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: Draft Materials | Cabinet & Committees Briefing
>
> Hi Bruno,
>
> DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?
>
> Thanks,
> Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP EFBedit_v2.pptx>

From: Bruno Amara
To: Gavin He
Cc: Ronald Kwan; John Kim
Subject: Re: Draft Materials | Cabinet & Committees Briefing
Date: Saturday, June 24, 2017 7:36:44 PM

Hi Gavin

Thx. I'm on the road, but I think the credit facility summary is missing explanation of why short term financing may be needed. I'll take closer look when I get home and send draft edits.

Bruno

Sent from my iPhone

On Jun 24, 2017, at 7:28 PM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Bruno,
>
> DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?
>
> Thanks,
> Gavin He
>
> ---
>
> **From:** Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
> **Sent:** Saturday, June 24, 2017 5:53 PM
> **To:** Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
> **Cc:** Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF) <Ryan.Birks@ontario.ca>
> **Subject:** Draft Materials | Cabinet & Committees Briefing
>
> Hi Everyone,
>
> I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.
>
> - Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
> - Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your

staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP.pptx>

From: Gavin He
To: Ronald Kwan
Subject: Re: Draft Materials | Cabinet & Committees Briefing
Date: Sunday, June 25, 2017 5:36:34 PM

Hi Ron,

Are you good with this version going back to Brandon?

Thanks,
Gavin He

On Jun 25, 2017, at 4:11 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Right. Thx
>
> Sent from my iPhone
>
> On Jun 25, 2017, at 2:27 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi,
> >
> > Just a couple additional tweaks for terminology consistency.
> >
> > Ron
> >
> > ---
> >
> > **From:** Bruno Amara
> > **Sent:** June-25-17 10:37 AM
> > **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> > **Cc:** Gavin He <Gavin.He@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> > **Subject:** Re: Draft Materials | Cabinet & Committees Briefing
> >
> > Yes that works. Thanks
> >
> > Sent from my iPhone
> >
> > On Jun 25, 2017, at 1:48 AM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
> >
> > > Hi Bruno,
> > >
> > > How about this?
> > >
> > > Thanks,
> > > Ron

From: Bruno Amara
Sent: June-24-17 10:08 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Gavin

I have edited the OIC ($2B line of credit) explanation)

Bruno

From: Gavin He
Sent: Saturday, June 24, 2017 7:29 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Draft Materials | Cabinet & Committees Briefing

Hi Bruno,

DMO drafted a deck for the briefing on Monday, which includes the attached slide on FHP. Could you please review and let me know if you have any comments?

Thanks,
Gavin He

From: Chaput, Brandon (MOF) [mailto:Brandon.Chaput@ontario.ca]
Sent: Saturday, June 24, 2017 5:53 PM
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Brian Lewis (MOL) <Brian.Lewis@ontario.ca>
Cc: Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>; Gavin He <Gavin.He@ofina.on.ca>; Ghufran Tarin (MOF) <Ghufran.Tarin@ontario.ca>; Vivienne Skoberne (MOHLTC) <Vivienne.Skoberne@ontario.ca>; Tim Schuurman (MOF) <Tim.Schuurman@ontario.ca>; Selena Esmail (MOF) <Selena.Esmail@ontario.ca>; Birks, Ryan (MOF)

<Ryan.Birks@ontario.ca>
Subject: Draft Materials | Cabinet & Committees Briefing

Hi Everyone,

I didn't make as much progress as I'd have liked today, but tried to start with the items you'd have the most interest in so you had more time to review.

- Scott / Ron / Kaitlin / Gavin – please see slide 8 for a quick overview of the electricity package tracking to the Board / Cabinet on Tuesday;
- Brian / Ghufran – the resource revenue sharing placemat hasn't changed from the version your staff approved a week or so ago, but thought you might want to see the Climate Change Adaptation Strategy (slide 3) and/or the Ring of Fire (slide 4) placemats. Note that I'm just guessing on Ring of Fire – I haven't seen the submission they're walking into the Minister's Table on Monday (which I understand is only a subset of the issues they highlighted at Major Projects this week).

Any comments welcomed,
Brandon

--
Brandon Chaput | 416.562.4958

<32 20170627 Explainer (CAB) - FHP EFBedit_v2.pptx>

<32 20170627 Explainer (CAB) - FHP EFBedit_v3.pptx>

From: John Kim
To: Ronald Kwan
Subject: Re: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 6:26:51 PM

Given the if statement I'd be fine as is. They would have a hard time meeting that is my assessment. I've sent them an email.

> On Jun 14, 2017, at 6:19 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> Hi John,
>
> FYI. I added in "mid" in the last bullet too.
>
> When do you think you'll hear back from Legal on their comfort on timing? I'd like to get back to Marianne.
>
> Ron
>
> -----Original Message-----
> From: Nelms, Scott (MOF) [mailto:Scott.Nelms@ontario.ca]
> Sent: June-14-17 18:03
> To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> Subject: RE: Draft bullets re s28 timin Pls see below for changes.
>
> Sounds good to me. Thanks Ron.
>
>
> Sent with BlackBerry Work
> (www.blackberry.com)
>
> From: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Date: Wednesday, Jun 14, 2017, 6:01 PM
> To: Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
> Subject: FW: Draft bullets re s28 timin Pls see below for changes.
>
> Hi Scott,
>
> How about the following?
>
> Ron
>
>
>
> * CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.
>
>
>
> * In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.
>
>

>
> * CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.
>
>
>
> * MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.
>
>
>
> * CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.
>
>
> Ron
>
>
> From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
> Sent: June-14-17 10:42
> To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
> Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
> Subject: RE: Quick chat...
>
> Thank you. Just a few bullets would be helpful - don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.
>
> From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
> Sent: June-14-17 10:38 AM
> To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
> Cc: Tekle, Jonathan (MOF)
> Subject: RE: Quick chat...
>
> Hi Marianne,
>
> We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.
>
> Ron
>
> From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
> Sent: June-14-17 10:35
> To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
> Subject: FW: Quick chat...
>
> Can you provide a few bullets by way of update please?
>
> From: Mendes, Elizabeth (MOF)
> Sent: June-14-17 10:34 AM
> To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
> Cc: Nguyen, Marianne (MOF)
> Subject: RE: Quick chat...
>

> Hi Andrew,
>
> Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.
>
> Thanks,
> Liz
>
> From: Teliszewsky, Andrew (ENERGY)
> Sent: June-14-17 7:11 AM
> To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
> Subject: Re: Quick chat...
>
> Good Morning:
>
> Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?
>
> Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?
>
> Many thanks, in advance.
>
> Andrew Teliszewsky
> 416-327-3550
>
>
> From: Mendes, Elizabeth (MOF)
> Sent: Thursday, June 8, 2017 10:33 AM
> To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
> Subject: RE: Quick chat...
>
>
> Call my cell 416-553-2446
>
> From: Baker, Carys (ENERGY)
> Sent: June-08-17 10:33 AM
> To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
> Subject: RE: Quick chat...
>
> I can make that work. What number can he reach you at?
>
> Carys Baker | Special Assistant to the Chief of Staff - Andrew Teliszewsky Office of the Hon. Glenn Thibeault | Minister of Energy
> T: 416-327-0431 C: 647-328-7556
> carys.baker@ontario.ca<mailto:carys.baker@ontario.ca>
>
> From: Mendes, Elizabeth (MOF)
> Sent: June-08-17 10:14 AM
> To: Teliszewsky, Andrew (ENERGY)
> Cc: Baker, Carys (ENERGY)
> Subject: RE: Quick chat...
>
> Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm
>
> From: Teliszewsky, Andrew (ENERGY)
> Sent: June-08-17 10:01 AM

> To: Mendes, Elizabeth (MOF)
> Cc: Baker, Carys (ENERGY)
> Subject: Re: Quick chat...
>
> Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?
>
>
> From: Mendes, Elizabeth (MOF)
> Sent: Thursday, June 8, 2017 9:57 AM
> To: Teliszewsky, Andrew (ENERGY)
> Cc: Baker, Carys (ENERGY)
> Subject: RE: Quick chat...
>
>
> Hi Andrew,
>
> Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.
>
> Thanks,
> Liz
>
> From: Teliszewsky, Andrew (ENERGY)
> Sent: June-08-17 9:55 AM
> To: Mendes, Elizabeth (MOF)
> Cc: Baker, Carys (ENERGY)
> Subject: Quick chat...
>
>
> Good Morning Liz:
>
> Was communicating with Ali (via Berlin) and he suggested I contact you.
>
> I have an Ontario Fair Hydro Plan related item I could use your help with.
>
> Wonder if you have 5-7 mins for a quick chat, later today, please?
>
> Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?
>
> Many thanks, in advance.
>
> Andrew Teliszewsky
> 416-327-3550
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: Re: Draft bullets re s28 timin Pls see below for changes.
Date: Wednesday, June 14, 2017 5:58:54 PM

Looks good, thanks

On Jun 14, 2017, at 5:53 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> How about this?
>
> <!--[if !supportLists]-->• <!--[endif]-->CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.
>
> <!--[if !supportLists]-->• <!--[endif]-->In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.
>
> <!--[if !supportLists]-->• <!--[endif]-->CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.
>
> <!--[if !supportLists]-->• <!--[endif]-->MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.
>
> <!--[if !supportLists]-->• <!--[endif]-->CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.
>
> Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)

Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may

contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Nguyen, Marianne (MOF)
To: Ronald Kwan
Subject: Re: Draft bullets re s28 timin Pls see below for changes.
Date: Thursday, June 15, 2017 9:45:49 AM

Thanks, Ron.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 6:45 PM
To: Nguyen, Marianne (MOF)
Cc: Tekle, Jonathan (MOF); Nelms, Scott (MOF)
Subject: FW: Draft bullets re s28 timin Pls see below for changes.

Hi Marianne,

Some bullets, as requested.

· CEFD has prepared a draft briefing note related to the s28 request related to IESO and OPG Indemnities based on information received from Energy Legal and has been consulting with MoF Legal on this request.

· In reviewing the information and draft indemnity agreements, there were some concerns raised regarding the scope of the requested indemnities and interaction with existing statutory protections and indemnities. As a result, CEFD submitted a number of questions seeking more information and clarification to Ministry of Energy Legal on June 8th . We understand that Ministry of Energy Legal has passed some of these questions on to OPG and IESO as well.

· CEFD/MoF Legal are currently awaiting the response to questions before being able to move forward with the section 28 request.

· MOF and Energy Legal have also been working on the draft of the indemnities requested. Energy Legal would also be consulting with OPG and IESO on the revised drafts.

· CEFD will finalize its briefing note as soon as possible after receiving the responses. CEFD expect that if Energy responds this week, and subsequently submits a signed s.28 approval request early/mid next week, that staff would be on track to bring forward a s.28 approval package to the Minister by the end of June.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>

Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca<mailto:Jonathan.Tekle@ontario.ca>>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky

416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca<mailto:carys.baker@ontario.ca>

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Hi Andrew,

Sure. Can you do 12pm? I’m in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM

To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat...

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: Re: Draft bullets re s28 timin
Date: Wednesday, June 14, 2017 5:59:57 PM

We can check with legal in the timing. I think if energy delivers our part is very straight forward but can check

On Jun 14, 2017, at 5:30 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi,
>
> Has that been added to the response back to Marianne yet, and is Legal aware and okay working within that timeline?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** June-14-17 14:17
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** RE: Draft bullets re s28 timin
>
> Agreed. I'd like to suggest end of this week in order to meet the end of the month timeline.
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Wednesday, June 14, 2017 2:12 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** RE: Draft bullets re s28 timin
>
> Hi John,
>
> I think we should then say by when we need responses / information back from Energy in order to meet an end of June timeframe to bring this forward to the Minister of Finance for consideration – recognising that we would have liked to have the signed submission weeks ago (and they might say they stated the process with TBS a month ago, or more).
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** June-14-17 13:56

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

I think so, yes. The path to resolution involves Energy addressing the comments and concerns raised and until that point, I don't believe MOF Legal staff are comfortable setting expectations around approvals timing, etc.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:53 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

Sure.

Would it include clear statements to respond to Marianne's request on path to resolution, confirmation that we're on track, and expected approval date?

Thanks,
Ron

From: John Kim
Sent: June-14-17 13:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi Ron,

Fyi, Legal advises staying away from sending the attachment. They will have some tweaks on the wording in the email below.

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 1:12 PM
To: John Kim <John.Kim@ofina.on.ca>

Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Thanks John. Fixed a typo, and added in "Legal" in various places, if that works.

Ron

From: John Kim
Sent: June-14-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Sure, I added to one of the paragraphs.

Will circle back with MOF Legal.

Thanks,

John

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 12:45 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: Draft bullets re s28 timin

Hi John,

A few suggestions, and, yes, good to consult with MOF Legal.

Ron

From: John Kim
Sent: June-14-17 11:40
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Draft bullets re s28 timin

Hi Ron,

Pls. see attached summary and a few bullets with main Qs.

Not sure if there's more time so did it very quickly. As Bruno points out, we could check with MOF Legal too if needed.

Thanks,

John

From: Bruno Amara
Sent: Wednesday, June 14, 2017 11:29 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Draft bullets re s28 timin

Hi John

See draft bullets on what's going on with s28. Wondering if we share with MoF Legal?

CEFD has prepared draft material related to the s28 request related to IES and OPG Indemnities. CEFD has been consulting with MoF Legal on this request. There were some concerns raised primarily around clarifying the scope of the requested indemnities and with respect to existing protection, for example under the Electricity Act (IESO) and Fair Hydro Act (OPG). CEFD submitted a number of questions in this regard to Ministry of Energy Legal on June 8. Ministry of Energy Legal noted that they would review and respond. CEFD shared a draft briefing note with Ministry of Energy Legal on June 12 and some follow-up questions. In response to a question from Ministry of Energy Legal, it was confirmed that CEFD/MoF Legal were waiting for a response to questions before being able to move forward with the s28 request. Ministry of Energy Legal noted that responses would be sent back as soon as they heard from IESO and OPG. CEFD will finalize as soon as possible after this.

From: Ronald Kwan
Sent: Wednesday, June 14, 2017 10:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: FW: Quick chat...

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: RE: Quick chat...

Thank you. Just a few bullets would be helpful – don't need an extensive note. Primarily on outstanding issues, path to resolution, confirmation that we're on track, and expected approval date.

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: June-14-17 10:38 AM
To: Nguyen, Marianne (MOF); Nelms, Scott (MOF)
Cc: Tekle, Jonathan (MOF)
Subject: RE: Quick chat...

Hi Marianne,

We'll draft something, though I'd note that it's not OEFC that is working on this, but CFD as part of the OFA's responsibilities on s.28 requests.

Ron

From: Nguyen, Marianne (MOF) [mailto:Marianne.Nguyen@ontario.ca]
Sent: June-14-17 10:35
To: Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>
Subject: FW: Quick chat...

Can you provide a few bullets by way of update please?

From: Mendes, Elizabeth (MOF)
Sent: June-14-17 10:34 AM
To: Teliszewsky, Andrew (ENERGY); Baker, Carys (ENERGY)
Cc: Nguyen, Marianne (MOF)
Subject: RE: Quick chat...

Hi Andrew,

Do you have some time to chat later this afternoon? I will have Marianne join this convo since she's been working with OEFC on this file.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-14-17 7:11 AM
To: Mendes, Elizabeth (MOF); Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Good Morning:

Wondering on this item we discussed late last week, regarding OFHP S.28 - if you happen to have had occasion to seek update from MoF legal / officials?

Perhaps we could find the time to connect later this week to make sure we on same page and that Energy is delivering what your folks need from a comfort perspective to get this done, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 10:33 AM
To: Baker, Carys (ENERGY); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

Call my cell 416-553-2446

From: Baker, Carys (ENERGY)
Sent: June-08-17 10:33 AM
To: Mendes, Elizabeth (MOF); Teliszewsky, Andrew (ENERGY)
Subject: RE: Quick chat...

I can make that work. What number can he reach you at?

Carys Baker | Special Assistant to the Chief of Staff – Andrew Teliszewsky
Office of the Hon. Glenn Thibeault | Minister of Energy
T: 416-327-0431 C: 647-328-7556
carys.baker@ontario.ca

From: Mendes, Elizabeth (MOF)
Sent: June-08-17 10:14 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat...

Darn, the ceremonies go from 3pm-5pm. Can we chat 5pm

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 10:01 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Re: Quick chat...

Eek. I'm at a thing at noon. I can probably end my earlier briefing. How about 3.30pm?

From: Mendes, Elizabeth (MOF)
Sent: Thursday, June 8, 2017 9:57 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Baker, Carys (ENERGY)
Subject: RE: Quick chat…

Hi Andrew,

Sure. Can you do 12pm? I'm in a meeting with the Minister until 12pm and then over at the Leg for Portugal Day Flag raising events at 4pm.

Thanks,
Liz

From: Teliszewsky, Andrew (ENERGY)
Sent: June-08-17 9:55 AM
To: Mendes, Elizabeth (MOF)
Cc: Baker, Carys (ENERGY)
Subject: Quick chat…

Good Morning Liz:

Was communicating with Ali (via Berlin) and he suggested I contact you.

I have an Ontario Fair Hydro Plan related item I could use your help with.

Wonder if you have 5-7 mins for a quick chat, later today, please?

Carys can confirm but I think that I have windows @ 11.30 am or 4pm today, if that works for your book?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Mark Donaldson (MOF)
Cc: Veinot, Cindy (TBS)
Subject: Re: FHP Note -- CFS (DRAFT)_Markup
Date: Thursday, September 06, 2018 9:33:56 AM
Attachments: FHP Note -- CFS (DRAFT)_Markup2.docx

Thanks Mark. I had a comment on your first comment, noting why I'd prefer to just say "government" in that spot.

And, to echo Gadi, it's a good note.

Ron

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Sent: September 6, 2018 7:23 AM
To: Ronald Kwan
Cc: Veinot, Cindy (TBS)
Subject: FHP Note -- CFS (DRAFT)_Markup

Hi Ron – please see responses to your comments. Appreciate the input. Mark

Accounting for Ontario's Reduction in Current Electricity Prices

In May 2017, the government passed the *Ontario Fair Hydro Plan Act, 2017* (the Act).

The components of the plan to reduce current electricity prices include both aspects of the plan provided for in the Act as well as other policy decisions, as follows:

1. The Ontario Rebate for Electricity Consumers~~A rebate~~ (OREC) in the amount equivalent to the~~of~~ 8% provincial portion of the Harmonised Sales Tax (HST) ~~of~~on electricity bills ~~for~~of eligible residential, small business and farm consumers, commencing January 2017, funded by the ~~tax base~~government;
2. Increases to the Ontario Electricity Support Program, and transfer of the funding of this program from the electricity rate base to the ~~tax base~~government;
3. Reductions, existing and expanded for certain rural electricity consumers, funded by the ~~tax base~~government instead of the rate base;
4. Reduction equivalent to the delivery charge for First Nations residential consumers living on reserve, funded by the ~~tax base~~government;
5. A fund established to provide free, energy efficient devices and products to qualified individuals and organizations, funded by the ~~tax base~~government; and
6. An additional reduction in current electricity bills for eligible residential, small business and farm customers, commencing July 1, 2017, such that the impact of this reduction combined with the impact of items 1 to 3 above resulted in an average reduction of 25% for residential customers (with differential benefits for other eligible customers), which, unlike items 1 to 5 above, was to be funded by the electricity rate base. This reduction was to be recovered from electricity ratepayers in future years. This aspect of the plan is referred to as the Global Adjustment Refinancing.

The impact of Items 1 through 5 noted above– all funded by the ~~tax base~~government– are recognized as an expense in the consolidated financial statements as incurred.

Item 6, the Global Adjustment Refinancing, was to be funded by the electricity rate base, and to be recovered from electricity ratepayers in future years.

In September 2018, Cabinet ratified a decision to make a change to the Ontario Fair Hydro Plan Act to cancel the Global Adjustment Refinancing component as designed, including reducing the cost ~~amount~~ of the current electricity price reduction to be borne by future ratepayers, and by making any recovery from future ratepayers optional. This decision changes the estimated recovery from future ratepayers, and does not support the use of rate-regulated accounting.

The entities that recorded transactions in the year related to the Global Adjustment Refinancing are as follows:

Commented [RK1]: "tax base" seems an internal colloquialism, not an official publication, vs being funded by general government (or "provincial") revenues (current or future, if borrowed for now).

Commented [DM(2]: I think the intent was to clarify the distinction within the OFHPA between taxpayer and ratepayer w.r.t. its impact on the accounting - to maintain this distinction, could we say "funded by the government from tax revenue"?

Commented [KR(3R2]: I'd prefer just "government" – it's not necessarily "tax" revenue, as there won't be earmarking of funds from taxes to this vs other sources of government revenues (e.g., federal, fees, sales and rentals).

And there may be criticism on saying "revenue" as it's generally understood that, in the deferral period at least, this is essentially financed by incremental borrowing, not revenue.

Commented [RK4]: Is this part being Minuted now? Is this what ENDM is to return and report back on? Does / could this be reworded to reflect that this refers to reducing the cost, by having it be government borrowing?

Commented [DM(5]: The borrowing aspect doesn't impact the accounting (this is a FS note disclosure). "reducing the cost" I believe is more associated with less than 100% recovery of the GA refinancing

Commented [RK6]: Is this in the other or revised Minute? Can we review that Minute too?

Commented [DM(7]: This will be part of the minute – still being drafted by Operating Expenditure Management Division

DRAFT

- The Independent Electricity System Operator (IESO) is a consolidated government organization and reports its financial results in accordance with Public Sector Accounting Standards. The IESO is an entity regulated by the Ontario Energy Board.
- Ontario Power Generation (OPG), an entity wholly-owned by the Province, was appointed the Financial Services Manager under the Act and in December 2017 established the Fair Hydro Trust (the Trust), a wholly-owned subsidiary of OPG, as the financing entity contemplated by the Act.

In connection with the Global Adjustment Refinancing (item 6), in the initial years as originally designed, the IESO incurred a cash shortfall for the difference between the amounts collected from the electricity consumers and the contracted price paid to the power generators. The amount of the shortfall for the year ended March 31, 2018 was $1,789 million.

During the year, the IESO under the authority permitted under the Act, transferred $1,639 million of the shortfall to the Trust in exchange for an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future. The remaining shortfall recorded by the IESO as a rate regulated asset as of March 31, 2018 was $150 million.

As a result of the decision made on September 12, 2018, the government has determined that the rate-regulated asset that IESO had recorded as of March 31, 2018 ($150 million) no longer meets the criteria to be recorded as an asset, as the decision significantly reduces the likelihood of recoverability. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

The Trust recorded an intangible asset in connection with the payment made to IESO for the acquisition an irrevocable right to the recovery of the transferred balance and financing and other costs to be received from specified consumers in the future (the shortfall). The Trust funded the acquisition of the cash shortfall from the IESO during the year ($1,639 million) with subordinated debt from Ontario Power Generation to a maximum of 49% of the Trust's total outstanding debt, and the balance from third party lenders. Of the amount lent to the Trust from OPG, approximately 90% of that amount ($721 million) was funded by equity injections from the Province, and 10% was funded by debt borrowed by OPG from third party lenders. As of March 31, 2018, the Trust owed $803 million to OPG and $836 million to third party lenders.

As a result of the decision made on September 12, 2018, the government has determined that the intangible asset recorded by the Trust is impaired. Accordingly, the government has written down the value of this asset to NIL in the consolidated financial statements of the Province.

Commented [RK8]: The term used elsewhere seemed to be "investment asset" – or is that legislative "jargon" vs accounting jargon – with the latter using "intangible asset"?

Commented [DM(9]: Intangible is an accounting concept.

DRAFT

In connection with all of the debt issued by the Trust, the Province issued a limited guarantee to fund all future obligations associated with debt issued and outstanding at the time that the guarantee is invoked. These conditions are limited to the repealing or significant change to the Act, its regulations or other legislation, or any significant change to the structure of Ontario's electricity market which impacts the components of the plan.

As a result of the decision made on September 12, 2018, the government expects that ~~the~~ one of the conditions of the limited guarantee will be met, and as a result, the government will fund all future obligations issues and outstanding as of the date the guarantee is invoked. As of March 31, 2018, the amount of the obligations that the government expects to fund to the Trust is $1,639 million, resulting in a recovery to be recorded by the Trust (leaving the Trust whole) and an expense recorded by the Ministry of Energy of 1,639 million. The total expense recorded in the 2017-18 consolidated financial statements as a result of this decision is $1,789 million.

As a wholly-owned subsidiary of Ontario Power Generation, the assets and liabilities of the Trust are recorded as part of the Investment in Government Business Enterprises in the consolidated statement of financial position, and disclosed as part of Ontario Power Generation in Schedule 9 to these consolidated financial statements.

DRAFT

In summary, the impact on expenses and assets of the consolidated financial statements of the components of the plan to reduce current electricity rates, taking into consideration the decision of the government on September 12, 2018 is as follows:

Component	Funding source	Amount recognized as an expense (in millions)	Amount recognized as a rate regulated asset (in millions)
1 – ~~8% rebate~~OREC	~~Tax base~~Government	$810	NIL
2 – OESP	Government~~Tax base~~	$20	NIL
3 – Rural rate reduction	Government~~Tax base~~	$325	NIL
4 – First Nations delivery credit	Government~~Tax base~~	$15	NIL
5 – Affordability Fund (amount expensed in 2016–17)	Government~~Tax base~~	NIL	NIL
6 – Global Adjustment refinancing	Electricity Rate Base	$1,789	NIL

Commented [RK10]: Seems low – is this just the incremental amount? Or does this reflect that the prior ratepayer "surplus" recovery in OESP had to be worked off first, so only a very small amount was government-funded in 17-18?

Commented [DM(11]: Numbers provided by Energy

Any debt incurred to fund items 1 to 5 is part of general borrowing of the Province and recorded as Debt on the consolidated statement of financial position.

Debt incurred to fund item 6 is recorded based on the source of the financing:

Source of financing	Amount of debt at March 31, 2018 (in millions)	Where recognized in the consolidated statement of financial position
1 – Equity injection from Province to OPG	$721	Debt
2 – Debt borrowed by OPG from third party lenders and lent to the Trust	$82	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9
3 – Debt borrowed by Fair Hydro Trust from third party lenders	$836	Investment in Government Business Enterprises, the details of which are disclosed in Schedule 9

DRAFT

From: Hume, Steen (ENERGY)
To: Ronald Kwan
Cc: McKinlay, Tom (ENERGY); Hilary Cox (ENE); John Kim
Subject: Re: FHP
Date: Thursday, October 05, 2017 2:56:02 PM

Hi Ron: I haven't heard anything from OPG, but we'll follow-up. I've reviewed the draft letter, looks generally fine. Staff had a couple of small edits.

Steen

Sent from my iPad

On Oct 5, 2017, at 12:46 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>> wrote:

Hi Steen,

I just wanted to check in with you on this and any questions or issues you may have at your end.

As you may recall, IESO asked to loop in OPG on this as well for their information and feedback. I understand from staff that IESO has not yet heard back from OPG on this. Would you have insights on any concerns OPG might have, timing of a review/response, or any timing issues or concerns arising out of OPG's discussions with IESO on their services agreement?

Thanks,
Ron

From: Ronald Kwan
Sent: September-19-17 13:18
To: Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca<mailto:Tom.McKinlay2@ontario.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca<mailto:Tom.McKinlay2@ontario.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Steen Hume (CAB)
Cc:	McKinlay, Tom (ENERGY); Hilary Cox (ENE); John Kim
Subject:	Re: FHP
Date:	Thursday, October 05, 2017 2:58:10 PM

Thanks Steen.

Ron

From: Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>
Sent: October 5, 2017 2:55 PM
To: Ronald Kwan
Cc: McKinlay, Tom (ENERGY); Hilary Cox (ENE); John Kim
Subject: Re: FHP

Hi Ron: I haven't heard anything from OPG, but we'll follow-up. I've reviewed the draft letter, looks generally fine. Staff had a couple of small edits.

Steen

Sent from my iPad

On Oct 5, 2017, at 12:46 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>> wrote:

Hi Steen,

I just wanted to check in with you on this and any questions or issues you may have at your end.

As you may recall, IESO asked to loop in OPG on this as well for their information and feedback. I understand from staff that IESO has not yet heard back from OPG on this. Would you have insights on any concerns OPG might have, timing of a review/response, or any timing issues or concerns arising out of OPG's discussions with IESO on their services agreement?

Thanks,
Ron

From: Ronald Kwan
Sent: September-19-17 13:18
To: Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca<mailto:Tom.McKinlay2@ontario.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
Subject: RE: FHP

Hi Steen,

John has been working with OFA Legal on this and he can put Tom in touch with OFA Legal.

Ron

From: Hume, Steen (ENERGY) [mailto:Steen.Hume@ontario.ca]
Sent: September-19-17 13:07
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: McKinlay, Tom (ENERGY) <Tom.McKinlay2@ontario.ca<mailto:Tom.McKinlay2@ontario.ca>>; Hilary Cox (ENE) <Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>
Subject: RE: FHP

Hi Ron: thanks for the call this afternoon.

Had a quick chat with Tom re the "intercept" matter. Can you connect Tom up with your lawyer on the file so that they can have a quick chat when time permits. Also any background materials on the matter would be helpful

Thanks, Steen

From: Ronald Kwan [mailto:Ronald.Kwan@ofina.on.ca]
Sent: September 19, 2017 12:02 PM
To: Hume, Steen (ENERGY)
Subject: FHP

Hi Steen,

Are you available later today or tomorrow morning to discuss a couple of Fair Hydro Plan related issues.

Thanks,
Ron

_____

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan on behalf of /O=OFA/OU=OFINA ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RKWAN
To: Gadi Mayman; Anna Strathy
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:06:55 PM

Hi Gadi, Anna,

I was just noticing that Toby's email included the

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Sent: October 26, 2017 1:55 PM
To: Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

1 – Master Transfer and Servicing Agreement;
2 – IESO Security Agreement;
3 – Master Trust Indenture; and
4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

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: 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]

TORYS LLP[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

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From: John Kim
To: Ronald Kwan
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:51:01 PM

This is great.

Sent from my iPhone

On Oct 26, 2017, at 4:48 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> I think we are saying essentially the same thing in the end, except you wrote it better, since I missed a word ("why"), now added in below.
>
> Ron

From: John Kim
Sent: October 26, 2017 4:23 PM
To: Ronald Kwan
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi Ron,

I am reading more along the line that if OPG is allowing IESO to use the appropriation for its intended purpose then they are essentially saying that operating appropriations are sacred as in you go use it to survive.

But you know my English is very second language….

John

From: Ronald Kwan
Sent: Thursday, October 26, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Rather that OPG appears to be allowing IESO to use the appropriations for their intended purpose, not as security for OPG, so why should OPG be fussed if the OFA intercepts the appropriations, should it come to that?

Ron

From: John Kim
Sent: October 26, 2017 4:15 PM
To: Ronald Kwan
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi Ron,

Are you thinking that our appropriation per the Intercept Provision under OFA Lending Policy is excluded?

John

From: Ronald Kwan
Sent: Thursday, October 26, 2017 4:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Comments on the wording in 3.1(a) on **Covenants**:

The Grantor hereby covenants and agrees with the Secured Party as follows:

Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.

(Where "Appropriations" is defined as under the FAA.)

Ron

From: Ronald Kwan
Sent: October 26, 2017 3:58 PM
To: John Kim
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement

Hi John,

Have you looked at the IESO Security Agreement draft, and particularly with respect to how it (and the intercept) would work in the context of an intercept provision.

Ron

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Sent: October 26, 2017 1:55 PM
To: Anna Strathy; Gadi Mayman; Ken Kandeepan; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

1 – Master Transfer and Servicing Agreement;

2 – IESO Security Agreement;

3 – Master Trust Indenture; and

4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

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: 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]

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

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:11:49 PM

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly

prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:42:40 PM

Thanks John.

Ron

From: John Kim
Sent: October 24, 2017 4:41 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Ron,

I put your edits back in…..sorry, maybe my email was confusing. I told them that you had a point and shared the version with your edits to Energy and IESO. Seconds after, Victor sent this email.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 4:40 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Hi John,

To meet that timeline, I suggest that you work quickly to get OFA Legal's confirmation on the limited legal meaning of OFA signing a letter with that "confirm" wording.

Ron

From: John Kim
Sent: October 24, 2017 4:28 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if you have any concerns / comments.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for

further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:39:47 PM

Hi John,

To meet that timeline, I suggest that you work quickly to get OFA Legal's confirmation on the limited legal meaning of OFA signing a letter with that "confirm" wording.

Ron

From: John Kim
Sent: October 24, 2017 4:28 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if you have any concerns / comments.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa

Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named

recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:28:36 PM

Thanks John.

Is the letter being formatted, with the appropriate signature blocks added in?

Ron

From: John Kim
Sent: October 24, 2017 5:25 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: Finalization of OFA-IESO Credit Agreements

I think Energy is lined up, but last I heard was a few days ago. Tom called me this afternoon – 'what's the hold up?' being his main point.

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 5:12 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: Finalization of OFA-IESO Credit Agreements

Thanks John. Is Energy lined up to sign this week?

Ron

From: John Kim
Sent: October 24, 2017 5:08 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: Finalization of OFA-IESO Credit Agreements

FYI, Legal advised me on the wording.

From: John Kim
Sent: Tuesday, October 24, 2017 5:07 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William

Tan <William.Tan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new $2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of $975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it is OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Subject: Re: IESO - OFA
Date: Thursday, October 19, 2017 4:18:28 PM

Hi,

Do we have a current draft of the letter agreement that has been agreed to?

Ron

On Oct 19, 2017, at 4:13 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Fyi, IESO will move on signing the letter agreement. #2 below will likely to happen though they are resisting it so we need to account for that as a separate matter.
>
> ---
>
> **From:** Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
> **Sent:** Thursday, October 19, 2017 3:59 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: IESO - OFA
>
> Please call my cell 289-795-9426.
>
> ---
>
> **From:** John Kim [mailto:John.Kim@ofina.on.ca]
> **Sent:** October 18, 2017 1:53 PM
> **To:** Anthony Martinello
> **Subject:** RE: IESO - OFA
>
> Hi Anthony,
>
> Any update on OPG's position?
>
> Thanks,
>
> John
>
> ---
>
> **From:** Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
> **Sent:** Tuesday, October 17, 2017 11:06 AM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Cc:** Victor Buza <Victor.Buza@ieso.ca>
> **Subject:** IESO - OFA
>
> Ronald/John,
>
> Based on verbal feedback thus far, OPG has not raised a material concern with

the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.
DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Subject: Re: IESO - OFA
Date: Thursday, October 19, 2017 9:21:17 PM

Hi John,

Would you send me the current version, and has Legal reviewed it?

Thanks,
Ron

On Oct 19, 2017, at 9:04 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> The current draft of the letter agreement is the version that came back from Energy. IESO hasn't touched it in terms of providing edits/comments.
>
> Thanks,
>
> John
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** October-19-17 4:18 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: IESO - OFA
>
> Hi,
>
> Do we have a current draft of the letter agreement that has been agreed to?
>
> Ron
>
> On Oct 19, 2017, at 4:13 PM, John Kim <John.Kim@ofina.on.ca> wrote:
>
> > Fyi, IESO will move on signing the letter agreement. #2 below will likely to happen though they are resisting it so we need to account for that as a separate matter.
> >
> > ---
> >
> > **From:** Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
> > **Sent:** Thursday, October 19, 2017 3:59 PM
> > **To:** John Kim <John.Kim@ofina.on.ca>
> > **Subject:** RE: IESO - OFA
> >
> > Please call my cell 289-795-9426.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: October 18, 2017 1:53 PM
To: Anthony Martinello
Subject: RE: IESO - OFA

Hi Anthony,

Any update on OPG's position?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, October 17, 2017 11:06 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Victor Buza <Victor.Buza@ieso.ca>
Subject: IESO - OFA

Ronald/John,

Based on verbal feedback thus far, OPG has not raised a material concern with the proposed intercept letter. The IESO has raised the point that this intercept letter may extend to non-Min of Energy monies (e.g. MOECC) which I still have to land/discuss with my in-house legal. I hope to final this letter soon.

A few items as FYI for the proposed fair hydro structure:

1.
DRAFT - IESO is expected to post a letter of credit (or maybe a letter of guarantee solely written by IESO) in favour of the Trust for any non-credit rated LDCs defaults risk during the period 2021 to 2047. The amount has not been finalized but may be up to $75 million.

2.
DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.

Regards.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Gadi Mayman
To: Anna Strathy
Cc: Ken Kandeepan; Ronald Kwan
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:09:15 AM

Thanks, Anna. Please let Dave know what's happening.

On Sep 18, 2017, at 11:01 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Thanks, Ron.
>
> Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.
>
> Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?
>
> Thanks, Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, September 18, 2017 10:53 AM
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** Re: IESO Credit Facility and Intercept Provision Exemption
>
> Hi Anna,
>
> The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.
>
> As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.
>
> We'd need to respond that way to Legal, as it has been Legal's advice on the issue

of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility

documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister’s exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ronald Kwan
To: Ken Kandeepan; Anna Strathy
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:53:48 AM

Hi,

Just saw your response. I sent an email too.

Ron

From: Ken Kandeepan
Sent: September 18, 2017 10:47 AM
To: Anna Strathy
Cc: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 "Security" section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this is requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister's exemption should have no impact on IESO's accounting. On the other hand by not doing so a requirement in the OFA's Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he's hoping for a response to the question below before 1pm today when he'll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ronald Kwan
To: Anna Strathy
Cc: Gadi Mayman; Ken Kandeepan
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:53:09 AM

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: Ronald.Kwan@ofina.on.ca
To: Anna Strathy
Cc: Gadi Mayman; Ken Kandeepan
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:22:29 AM

Hi Anna,

I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in the OFA lending policy. For that, we'd need to consider Legal's advice on moving forward while being compliant with the policy (which has been one key point that led to the exemption request).

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Friday, September 15, 2017 1:57 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject:** IESO Credit Facility and Intercept Provision Exemption
>
> Hi Gadi,
>
> Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.
>
> You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.
>
> While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy,

as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From:	Gadi Mayman
To:	Ronald Kwan; Anna Strathy; Ken Kandeepan
Subject:	Re: IESO Credit Facility and Intercept Provision Exemption
Date:	Monday, September 18, 2017 11:27:59 PM

I like the proposed path in the last paragraph of your email, Ron. Let's see if we can make that work.

Gadi

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:38:02 PM
To: Anna Strathy; Ken Kandeepan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

> …prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month`s discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis – to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case

of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over $600 million of the existing $975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron,
>
> The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.
>
> If we did not seek an exemption, would there be any impact to IESO's accounting?
>
> Anna
>
> ---

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: John Kim
To: Ronald Kwan
Subject: Re: IESO OEFC credit facilities
Date: Wednesday, November 29, 2017 7:15:37 AM

Hi Ron,

OFA Legal took the position that this is management call.

I am used to people changing views but they have the version of the note from last week and have not raised an issue.

Thanks,

John

Sent from my iPad

On Nov 28, 2017, at 10:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Thanks John.
>
> And please remind me – has OFA Legal concurred that OEFC management can make the decision to amend without going to the Board first (and report on it afterwards, instead)?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** November-28-17 8:29 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Subject:** RE: IESO OEFC credit facilities
>
> Thanks Ron.
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** November-28-17 7:10 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: IESO OEFC credit facilities
>
> Hi John,
>
> I moved a bullet and changed a heading.
>
> Ron
>
> ---

From: John Kim
Sent: November-28-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas

Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: John Kim
Subject: Re: IESO OEFC credit facilities
Date: Wednesday, November 29, 2017 8:15:18 AM

Thanks John.

Ron

On Nov 29, 2017, at 7:15 AM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> OFA Legal took the position that this is management call.
>
> I am used to people changing views but they have the version of the note from last week and have not raised an issue.
>
> Thanks,
>
> John
>
> Sent from my iPad
>
> On Nov 28, 2017, at 10:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Thanks John.
> >
> > And please remind me – has OFA Legal concurred that OEFC management can make the decision to amend without going to the Board first (and report on it afterwards, instead)?
> >
> > Ron
> >
> > ---
> >
> > **From:** John Kim
> > **Sent:** November-28-17 8:29 PM
> > **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> > **Subject:** RE: IESO OEFC credit facilities
> >
> > Thanks Ron.
> >
> > ---
> >
> > **From:** Ronald Kwan
> > **Sent:** November-28-17 7:10 PM
> > **To:** John Kim <John.Kim@ofina.on.ca>
> > **Subject:** RE: IESO OEFC credit facilities

Hi John,

I moved a bullet and changed a heading.

Ron

From: John Kim
Sent: November-28-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Pls. see attached. I believe we need to give them some certainty or they will get very nervous soon.

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

John

From: Ronald Kwan
Sent: November-28-17 4:51 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

Some comments on the IESO-OEFC BN.

Ron

From: John Kim
Sent: November-27-17 11:51
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: IESO OEFC credit facilities

Hi Ron,

I did check the draft versions of the Security Agreement. The latest is attached here.

I don't believe it impacts the intercept that has not yet hit the IESO. The Covenant section that existed prior, that excluded appropriations, is not there. That said, Energy and IESO signed the intercept letter agreement / MOU after having checked with OPG.

The email below is Opal following up. I told her that I'm fine to have her share the note with anyone she sees fit. That I was following up with you.

Thanks,

John

From: Opal Kandelas
Sent: Monday, November 27, 2017 10:16 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO OEFC credit facilities

Hi John,

I spoke with Gadi briefly about the inclusion of permitted liens language in the OEFC agreements, during a regular meeting on Friday. He didn't seem to have any particular concerns about the risks to OEFC, nor any objections to providing TD with a copy of the OFA-IESO agreement. I think it would be good to share the briefing note and with him. Let me know if you have any thoughts on this.

Purely as FYI, I will also keep MoF legal in the loop on this.

Opal.

From: John Kim
Sent: Friday, November 24, 2017 6:29 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>
Subject: Re: IESO OEFC credit facilities

Hi Lisa,

As you will recall, we circulated earlier version of the note which you had reviewed and Sarah Neville as well. My understanding was the Legal took the position that this was a business decision. I can share the latest version of the note Monday. I am off today so am not sure where things are but understood that an effort would be made to bring everyone onside.

Thanks,

John

Sent from my iPad

On Nov 24, 2017, at 5:17 PM, Lisa Stein <Lisa.Stein@ofina.on.ca> wrote:

> Hi John,
>
> Do you have a status update regarding the IESO's request to amend the IESO-OEFC credit facilities? I understand that a briefing note is being circulated – please let me know if you require legal review.
>
> Thank you,
>
> Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim; Gavin He; Salman Qadir
Subject: Re: IESO Treasury Policy - likely revising for June 2017
Date: Tuesday, June 06, 2017 8:49:09 AM

Hi,

Please discuss with IESO.

Thanks,
Ron

On Jun 6, 2017, at 8:47 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> I'm good with edits. Examples provide some clarity and also make point iv) structure balance with the similar point iii).
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 05, 2017 6:00 PM
> **To:** John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** RE: IESO Treasury Policy - likely revising for June 2017
>
> Hi,
>
> Just a thought, as attached.
>
> Comments and considerations?
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-05-17 14:41
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** FW: IESO Treasury Policy - likely revising for June 2017
>
> Hi Ron
>
> Attached is the IESO Treasury Policy required annually. See Anthony's email below for two key changes from last year. IESO had requested feedback for end-of-day as they are preparing for Board meetings June 13/14 (I think tomorrow will do). Salman shared

this note this morning for comment, with Ken and Mike Manning. We have not yet heard back. Please let us now if you have any concerns or comments.

Thanks
Bruno

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Tuesday, May 30, 2017 11:29 AM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Salman,

Attached is a preliminary draft of the Treasury Policy and Sch A for your review.

Two changes have been made:

<!--[if !supportLists]-->1. <!--[endif]-->Permitting Fair Hydro program borrowings – self explanatory rationale; and

<!--[if !supportLists]-->2. <!--[endif]-->Increase from $420 million to $500 million in Sch A's Cdn Banks max limit per counter party.

The key rationale for the requested increase from $420 million to $500 million per counterparty is as follows:

• The market price of electricity has increased between 2014 to 2016 by approximately 16%-19% which has continued to result in the IESO managing higher and higher cash-flows and therefore seeking risk appropriate investments in accordance with the Treasury Policy – a large limit will allow the IESO to have more flexibility while being efficient with its cash;

• Over the past few years and relevant today, the availability of short-term (generally 1 day to 7 days which is used a lot by the IESO, and including less than 30 days investment) products such as Treasury Bills, BAs and Term Deposits have been irregular and not reliable for the IESO to find. The IESO generally deals in large amounts (several hundreds of millions) and given the lack of short term products at the size the IESO needs, the Sch 1 banks have been generally offering Term Deposits for the IESO at very low interest rates because the Banks do not need the IESO monies. In fact, a few banks offer the IESO less than 10bps for Term Deposits – which is significantly lower than Bank of Canada overnight rate and BAs rates. Therefore, a Term Deposit with very low interest yield does not align with a resulting lower counterparty risk for the IESO; and

• The IESO's Transmission Rights balances have in general remained higher than $100 million on average over the last few years despite an IESO target of $20 million. This

has resulted in the IESO managing higher cash-flows

- <!--[if !supportLists]-->• <!--[endif]-->While the Fair Hydro program is likely to not impact the IESO's overall net cash balances (borrow / sell should generally align), the timing of these cash flows may be different at times and the IESO may hold more cash (short term basis) for a few days. The sales/service agreement with OPG Trust has not been completed, and I am just listing this as a contingency in case for some reason IESO holds larger cash balances before paying back the Fair Hydro loans.

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]
Sent: May 23, 2017 3:11 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Thanks Anthony.

We are working on obtaining approvals to ensure the facility can be put in place. I assume we will follow the same process as for the $975m facility – I will touch base with our documentation team and get back to you – that being said, our priority at the moment is to secure certain approvals.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 22, 2017 2:32 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Will do – trying for this week.
Can you update me on whether the IESO's $2B Fair Hydro credit facility is a go or no go – and if OFA will prepare the legal docs to start the process?

Regards.

From: Salman Qadir [mailto:Salman.Qadir@ofina.on.ca]

Sent: May 18, 2017 3:09 PM
To: Anthony Martinello
Cc: John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject: RE: IESO Treasury Policy - likely revising for June 2017

Hi Anthony,

I wanted to circle back with you on this email, particularly regarding possibly updating the IESO's Treasury Policy. Since it does require the Minister of Finance's approval, the OFA would be involved in obtaining that approval from the Minister. When you do have a markup, please do share it with us. Any details on what the changes would be accomplishing etc would also be helpful.

Regards,
Salman

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Monday, May 15, 2017 3:13 PM
To: Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: IESO Treasury Policy - likely revising for June 2017

Salman,

As part of the Fair Hydro initiative, the IESO plans to ask government to permit FHP debt in an update to the O. Reg. 280/14.

In addition, IESO is likely to update its treasury policy (see attached – as approved by IESO Board and Min of Fin in 2015) to permit for the FHP draws/initiative.

I likely may also ask to increase the short term Cdn Sch I banks limits from $420million to $500million.

As part of the treasury policy update I wanted to give you/OFA a fyi and determine if you/OFA wish to comment back to me before I undertake the above changes.

Call me to discuss if easier.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]
This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<Item 8(iii) BLACKLINED Treasury Policy June 14 2017_Markup.docx>

From:	Ronald Kwan
To:	Gavin He
Cc:	John Kim; Bruno Amara; Salman Qadir
Subject:	Re: IESO Treasury Policy for Approval - Reg 280/14
Date:	Thursday, June 22, 2017 3:32:21 PM
Attachments:	01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v1-Markup.docx

Hi,

Some comments and suggestions on the BN.

Thanks,
Ron

From: Gavin He
Sent: June 22, 2017 12:57:55 PM
To: Ronald Kwan
Cc: John Kim; Bruno Amara; Salman Qadir
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Ron,

Please find attached the draft approval package for your review.

The package is also saved under below folder:

\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\IESO Treasury Policy\Minister of Finance - Approval Package

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 20, 2017 3:43 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Thank.

Can we do an approval package ASAP?

Thanks,
Ron

From: John Kim
Sent: June-20-17 15:35
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

Fyi.

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]
Conservation: www.saveONenergy.ca[saveonenergy.ca] | Twitter: saveONenergyOnt[twitter.com] |

LinkedIn: saveONenergy[linkedin.com]

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF
IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act,* 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act").
- ~~are not significant in nature and raise no concerns with staff~~.
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board ~~as usual~~.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
    - This change is a result of the recent passing of the *Ontario Fair Hydro Plan Act, 2017.*
2. Increase counterparty exposure to Schedule A Canadian Banks from the current $420million to $500 million, an increase of $80 million exposure per counterparty.
    - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS~~TEXT AND BACKGROUND~~

- ~~The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.~~
- [Add in bullets on the FHP and Act and why the IESO will need need to engage in these activities.]
- The IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are

deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
    - IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

- ~~Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.~~
- ~~Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.~~
- ~~In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.~~
- ~~On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.~~
- ~~The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).~~

BACKGROUND

Formatted: Font: (Default) Arial, Bold

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA's investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO's investment and borrowing activities.
- Given that the IESO's financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.

- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA
With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 22, 2016

From: Gadi Mayman
To: Ronald Kwan
Cc: Anna Strathy
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 3:44:01 PM

Yes. I think it makes logical sense to continue to be consistent with where we've been.

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:19 PM
To: Gadi Mayman
Subject: Fw: IESO and OFA - FHP Line of Credit Facility Directive

Hi Gadi,

Are you okay with keeping a 25 bps spread on the new OFA-IESO credit facility, consistent with existing and past OFA credit facilities for the IESO?

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

From:	Ronald Kwan
To:	Gavin He
Cc:	Bruno Amara; Salman Qadir
Subject:	Re: IESO and OFA - FHP Line of Credit Facility Directive
Date:	Tuesday, June 27, 2017 3:13:36 PM
Attachments:	01 - IESO-OFA - FHP Line of Credit Facility_MinDirective - BN v2_Markup.docx

Hi,

Some suggested edits.

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

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, consistent with the spread for current and past OFA credit facilities for the IESO.
- 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, which should more than offset any administrative cost impact on the OFA and Province.
  - The actual amount is expected to be small, as the IESO is expected to make draws for short periods to bridge brief timing differences in cash flows.
- 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 ultimately recovered from electricity ratepayers.
  - Notwithstanding this, recovery from electricity ratepayers is determined by the Ontario Energy Board. If IESO cannot sell the regulatory asset created ~~by the shortfall to a Financing Entity as prescribed in~~under the *Ontario Fair Hydro Plan Act, 2017*, to a financing entity under the Act, the IESO will have this revolving debt that can only begin to be repaid once ~~and if the Ontario Energy Board makes a decision to increase the rates the~~ ratepayers begin ~~pay~~ to pay down the deferred Global Adjustment amount~~for the debt~~.

DETAILS AND ANALYSIS

Formatted: Keep with next

- 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 right to recover the deferred amounts in the future~~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 monthly 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, which could result in longer than planned IESO draws on the credit facility.

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 reflects that the FHP prices for eligible consumers is being implemented through the ~~replacement of the current~~setting of prices under the RPP ~~by the new FHP~~.
  - Specific terms of the agreement are being negotiated between the IESO and OFA.

	Existing OFA ~~:~~ IESO Facility	**New Proposed OFA-IESO 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

From: Ronald Kwan
To: Gavin He
Cc: Bruno Amara; Salman Qadir
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 4:38:57 PM

Thanks Gavin.

It may just be the Frost computer, but the table at the bottom of p.2 seems to be broken up onto p.3. Could you reformat so it's all on p.2.

Thanks,
Ron

From: Gavin He
Sent: June 27, 2017 4:34 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

We are good with your edits. Attached is the clean copy. In addition, we made corresponding changes in the memos too.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:14 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive

Hi,

Some suggested edits.

Ron

From: Gavin He

Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:
\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package

Regards,
Gavin He

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 4:13:35 PM

Hi John,

I assume that you are putting together the blue signing package.

Ron

From: John Kim
Sent: October 24, 2017 4:04 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

It is fine. Let's take that incremental risk – we had that email from James Strang confirming but it is true that he likely has no authority to bind TBS.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 4:01 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

Unless OFA legal confirms that legal interpretation, I don't see how I can sign it as written (unless TBS separately confirms in writing).

If that can be handled internally (or with TBS), with no editing needing to be circulated to the IESO and Energy, that can work. If not, then the wording would seem to me needs to be edited.

Ron

From: John Kim
Sent: October 24, 2017 3:49 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I think OFA Legal is suggesting that the risk of further delay and things falling apart does not justify making edits on OFA's end. If you want to force that risk, however small, then I will just put the edits in there and tell them this is how it is.

I will do that now.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 4:00:42 PM

Hi John,

Unless OFA legal confirms that legal interpretation, I don't see how I can sign it as written (unless TBS separately confirms in writing).

If that can be handled internally (or with TBS), with no editing needing to be circulated to the IESO and Energy, that can work. If not, then the wording would seem to me needs to be edited.

Ron

From: John Kim
Sent: October 24, 2017 3:49 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I think OFA Legal is suggesting that the risk of further delay and things falling apart does not justify making edits on OFA's end. If you want to force that risk, however small, then I will just put the edits in there and tell them this is how it is.

I will do that now.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in

place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt

from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 3:46:39 PM

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter

with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Cc: Usman Zahid
Subject: Re: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 3:33:19 PM

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,
Victor
416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).
I am currently at about $405M utilized.
Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: John Kim
To: Ronald Kwan
Cc: Usman Zahid
Subject: Re: IESO credit facility - Intercept Letter
Date: Tuesday, October 24, 2017 4:15:17 PM

Yes, just did a final share with energy and ieso still caveating final review.

Sent from my iPhone

On Oct 24, 2017, at 4:13 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> I assume that you are putting together the blue signing package.
>
> Ron

From: John Kim
Sent: October 24, 2017 4:04 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

It is fine. Let's take that incremental risk – we had that email from James Strang confirming but it is true that he likely has no authority to bind TBS.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 4:01 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

Unless OFA legal confirms that legal interpretation, I don't see how I can sign it as written (unless TBS separately confirms in writing).

If that can be handled internally (or with TBS), with no editing needing to be circulated to the IESO and Energy, that can work. If not, then the wording would seem to me needs to be edited.

Ron

From: John Kim
Sent: October 24, 2017 3:49 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I think OFA Legal is suggesting that the risk of further delay and things falling apart does not justify making edits on OFA's end. If you want to force that risk, however small, then I will just put the edits in there and tell them this is how it is.

I will do that now.

Thanks,

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:47 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John

Ask OFA Legal in what manner OFA has been able to independently confirm that there are no appropriations from the legislature, or are they saying that because Energy and IESO are signing to confirm, the OFA would take that as confirmation and therefore be able to comfortably sign such a letter? I'd want them to state that in writing and sign a blue sheet package with a briefing note included that has a statement on legal advice to that effect.

Ron

From: John Kim
Sent: October 24, 2017 3:38 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: RE: IESO credit facility - Intercept Letter

Hi Ron,

I will put that in an email to these counterparties when we share the latest draft….that while we have the wording as is, that before we start the sign off they are to confirm it.

It looks like we are ready to execute this…..not sure if Gadi has seen it but if okay with you, I will ask Anna to share with Gadi the draft.

John

From: Ronald Kwan
Sent: Tuesday, October 24, 2017 3:33 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Re: IESO credit facility - Intercept Letter

Hi John,

I don't see OFA's role or capacity to confirm or not what appropriations there are from the legislature to IESO, unless you can independently get sign-off in writing from TBS that there are no such appropriations, I would not be see myself as having the capacity to sign a letter with such a confirmation by the OFA.

I think it would be fine to have the text read as both IESO and Energy both acknowledging and confirming, and the OFA acknowledge, but I don't see the OFA as confirming.

Ron

From: John Kim
Sent: October 24, 2017 2:39 PM
To: Ronald Kwan
Cc: Usman Zahid
Subject: FW: IESO credit facility - Intercept Letter

Hi Ron,

Could we chat on this pls?

I would advise letting this go for no other reason than the highlighted. I don't necessarily agree with the other parts of the paragraph but not sure if I want to delay further.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:13 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John,

I've discussed with Sarah N., and we think Ron's edits to the third paragraph of the letter agreement should be deleted and reverted back to the original language. The purpose of that paragraph is for all three parties to acknowledge the current situation, and to change the language for the OFA to "acknowledge" and the other parties to "confirm" the same details will create confusion and possibly further delay this matter.

Also, I recommend deleting the following language added by the IESO – "or through any other agencies, bodies or other means" in the last sentence of the second last paragraph.

Thank you,

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

****

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

****

From: John Kim
Sent: Tuesday, October 24, 2017 10:15 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: IESO credit facility - Intercept Letter

Hi Lisa,

Pls. take a look. Ron had some edits which we reflected to IESO's version.

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 9:54 AM
To: John Kim <John.Kim@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility - Intercept Letter

Hi John – per our discussion yesterday, attached is a markup of the draft Intercept Letter, which now shows IESO's changes (as well as those previously provided by MOE).

Let me know if you have any questions.

Regards,

Victor

416-969-6079

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new $2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the $975M capacity at about $200M-$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about $405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations

Independent Electricity System Operator (IESO) | T: 905-403-6944

Station A, Box 4474, Toronto, ON, M5W 4E5

www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: Ronald Kwan
To: John Kim
Subject: Re: IESO-OEFC Note_v3Clean.docx
Date: Tuesday, November 21, 2017 9:16:29 AM

Hi John,

The comments did raise the issue of whether a new Minister's directive would be needed or not. It would be good to include in the note what the advice is on that and why.

Thanks,
Ron

On Nov 21, 2017, at 7:43 AM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> So this has been an interesting exercise. In CEFD, we understood why they were putting in the changes to the Permitted Liens but Documentation had questions despite having done for both OFA facilities. I have let IESO know that for any structural changes/major requests that they need to come to us.
>
> Thanks,
>
> John
>
> ---
>
> **From:** John Kim
> **Sent:** Tuesday, November 21, 2017 7:24 AM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Subject:** RE: IESO-OEFC Note_v3Clean.docx
>
> Works for me. Mike, the signator (sp), has not yet given the okay but I believe this is almost there.
>
> Thanks,
>
> John
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, November 20, 2017 11:35 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: IESO-OEFC Note_v3Clean.docx
>
> Hi John,
>
> Thanks. How about this?

Ron

From: John Kim
Sent: November-20-17 4:02 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO-OEFC Note_v3Clean.docx

Thanks Ron. Reflected your comments to CMD Operations'.

John

From: Ronald Kwan
Sent: Monday, November 20, 2017 3:28 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: Re: IESO-OEFC Note_v3Clean.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

From: Ronald Kwan
To: John Kim
Subject: Re: IESO-OEFC Note_v3Clean.docx
Date: Monday, November 20, 2017 3:27:50 PM
Attachments: IESO-OEFC Note_v3Clean_Markup.docx

Hi john,

Some suggestions.

Ron

From: John Kim
Sent: November 20, 2017 8:57 AM
To: Ronald Kwan
Subject: FW: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Just wondering if you have had a chance to review this note.

Would it make sense to check with Energy policy staff that they are looped in on this?

Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

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

- Under ~~T~~the FHP, ~~requires the~~ IESO and Ontario Power Generation (OPG) are interacting~~to work together~~ to refinance a portion of the Global Adjustment ~~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 for the security agreement. 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 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 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 the OFA to make the same request 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

- With the 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 flown-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 also an agency of the government consolidated line-by-line in the Province's accounts. ~~[This was a bullet inserted by CMD – Operations.]~~

Formatted: Left: 1", Right: 1", Top: 0.69", Bottom: 0.56", Footer distance from edge: 0.28"

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [GH1]: We mentioned the security agreement in the above paragraph already, so we don't think we need to mention this again here.

Formatted: Font: +Body (Calibri), 11 pt

Formatted: Indent: Left: 0.5", No bullets or numbering

- The OFA included the requested changes in the OFA credit facilities, 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.

- 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*.

- ~~The OFA included the requested changes in the OFA credit facilities, 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.~~

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [JK2]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [GH3]: Would you be able to list out some key differences related to this scenario?

RECOMMENDATIONS

- In order to facilitate IESO and OPG in the implementation of the Fair Hydro Act and remain consistent with the language recently incorporated in existing IESO-OFA agreements, ~~OFA s~~Staff for OEFC are of the view that the exisiting OEFC Agreements ~~can~~should be amended to include liens related to FHP under the definition of the "permitted liens".

Commented [KR(4]: What's Legal's view?

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 (and new) 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

From: Ronald Kwan
To: Gavin He
Cc: Usman Zahid
Subject: Re: IESO-OEFC Note_v3Clean.docx
Date: Monday, December 11, 2017 1:02:48 PM

Thanks Gavin.

Ron

On Dec 11, 2017, at 9:56 AM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Ron,
>
> FYI – The amendments to those two OEFC credit facilities were executed last week.
>
> Regards,
> Gavin He
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, November 20, 2017 3:28 PM
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: IESO-OEFC Note_v3Clean.docx
>
> Hi john,
>
> Some suggestions.
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** November 20, 2017 8:57 AM
> **To:** Ronald Kwan
> **Subject:** FW: IESO-OEFC Note_v3Clean.docx
>
> Hi Ron,
>
> Just wondering if you have had a chance to review this note.
>
> Would it make sense to check with Energy policy staff that they are looped in on this?
>
> Thanks,

John

From: John Kim
Sent: Friday, November 17, 2017 10:16 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: IESO-OEFC Note_v3Clean.docx

Hi Ron,

Pls. see attached latest note on the IESO request to amend the two OEFC credit facilities. The file is saved in the folder below.

We have received comments from Documentation and Legal thus far but have not shared this version with them yet, as we are trying to manage the process.

Thanks,

John

S:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OEFC Line of Credit\OFHP

<$160M revolving credit - amending agreement no.7(Executed).pdf>

<$120M Note - amending agreement no.7(Executed).pdf>

From: Hanslep, Malle (MOF)
To: Ronald Kwan; John Kim
Cc: Tobias P. Whitfield (MOF)
Subject: Re: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 10:03:06 AM

Hi Ronald

I think this needs to be shared with the group at OFA also working on the guarantee

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ronald Kwan
Sent: Thursday, June 22, 2017 09:32
To: Hanslep, Malle (MOF); Kim, John (OFA)
Subject: Indemnities for OPG and IESO

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Hanslep, Malle (MOF)
To: John Kim; Ronald Kwan
Cc: Tobias P. Whitfield (MOF); Bruno Amara
Subject: Re: Indemnities for OPG and IESO
Date: Thursday, June 22, 2017 10:55:33 AM

We think this needs t:o be considered by the group that is considering the provincial guarantee so all are aware.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: John Kim
Sent: Thursday, June 22, 2017 10:53
To: Hanslep, Malle (MOF); Kwan, Ronald (OFA)
Cc: Whitfield, Tobias P. (MOF); Bruno Amara
Subject: RE: Indemnities for OPG and IESO

Hi Ron, Malle,

In terms of the timeline of whether it would be possible to bring forward the s28 approval at the briefing next week. Given the draft stage of Energy's materials provided this morning, I am not sure the timeline would be workable. A lot would depend on Energy's provision of the full package.

Malle, Toby, what is your assessment given where things are at the moment?

Thanks,

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, June 22, 2017 10:03 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: Re: Indemnities for OPG and IESO

Hi Ronald

I think this needs to be shared with the group at OFA also working on the guarantee

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ronald Kwan
Sent: Thursday, June 22, 2017 09:32
To: Hanslep, Malle (MOF); Kim, John (OFA)
Subject: Indemnities for OPG and IESO

Hi,

At the Energy Weekly on the FHP, Energy Legal said that the responses to the questions came over yesterday.

Have we seen and reviewed them? Are we comfortable with them?

Energy is looking to make a submission ASAP, and still looking for the s.28 approval in place by Tuesday so that

the Minister can sign the indemnity on Tuesday.

Are there, Have we seen revised indemnities to OPG and IESO?

I understand that the plan for a Minister of Finance briefing generally on the FHP is for it to be scheduled for Tuesday, so, would it be possible to bring forward the s.28 approval at that briefing? And the IESO Treasury Policy amendment too?

Ron

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: John Kim
Cc: Bruno Amara; Shajee Kathirgamanathan
Subject: Re: Intercept Exemption Directive
Date: Wednesday, August 16, 2017 9:33:05 PM

Thanks John.

Ron

On Aug 16, 2017, at 9:31 PM, John Kim <John.Kim@ofina.on.ca> wrote:

> Hi Ron,
>
> Pls. see attached note on the request and the draft directive OFA Legal has drafted. The second piece is very much work in progress but should be finalized tomorrow. We tried to reflect Malle's feedback to Lisa and also provide an alternate paragraph as a suggestion.
>
> Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Intercept Directive Package
>
> John
>
> Y. John Kim
> Director, Electricity Finance Branch
> Corporate & Electricity Finance Division
> Ontario Financing Authority
> Ph: 416-212-6996
> Email: john.kim@ofina.on.ca
>
> <01 - IESO-OFA - FHP LoC - Intercept Directive v5.docx>
>
> <DIRECTIVE Aug 16 V2.docx>

From: Gadi Mayman
To: Ronald Kwan
Cc: Anna Strathy
Subject: Re: Intercept letter agreement IESO MOE OFA
Date: Monday, November 06, 2017 5:53:54 PM

Fantastic. One item done, now we just need to get the protection agreement in place for the Ministers to sign.

Thanks,
Gadi

On Nov 6, 2017, at 5:51 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Gadi,
>
> FYI. The letter is signed, and the credit facility too.
>
> Ron
>
> ---
>
> **From:** Gavin He
> **Sent:** November-06-17 17:42
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: Intercept letter agreement IESO MOE OFA
>
> Hi Ron,
>
> FYI – please see attached a scanned copy of the intercept letter agreement signed by Energy and IESO.
>
> Regards,
> Gavin He
>
> ---
>
> **From:** John Kim
> **Sent:** Wednesday, October 25, 2017 1:57 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject:** RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
>
> Here you go.
>
> Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 1:49 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Ron,

There was a version control issue. We will fix and resend shortly.

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 1:16 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John,

The "confirm" paragraph was dropped altogether, and the new IESO bullet that was at the end was moved up to that part of the letter instead? I likely missed the flag on that change. Is Legal okay with that?

Ron

From: John Kim
Sent: October-25-17 12:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Fyi.

From: Gavin He
Sent: Wednesday, October 25, 2017 11:03 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

We have put the letter in a letter agreement format as you suggested below. Could you please take a look and let us know if this is the right format?

Thanks,
Gavin He

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:35 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Please send me a final draft for review

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:34 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

You just need to add letter head and signature titles and lines

---

From: John Kim
Sent: Wednesday, October 25, 2017 9:31 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Thanks Lisa.

Could you help us put this in a letter agreement format, with signing lines, etc? We can do the letter head, etc.

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:25 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

I am fine with #1 below. In any event, as previously discussed, OCCSDC is an agent of MOECC, not Energy.

From: John Kim
Sent: Tuesday, October 24, 2017 5:42 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

We can push back saying – we are already saying payments that are not appropriations of Energy is already ruled out. But then there is a risk of delay. If we are specifically ruling out this Ontario Climate Change solutions Deployment Corp. that is a known exemption, is it a problem to include?

From: John Kim
Sent: Tuesday, October 24, 2017 5:25 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

Are we able to work with the #1 below?

Thanks,

John

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 5:18 PM
To: John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John.

<!--[if !supportLists]-->1. <!--[endif]-->The changes made are acceptable except for those made to the penultimate paragraph – please amend this para to read as follows:

> 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.

<!--[if !supportLists]-->2. <!--[endif]-->Re the "[Energy to confirm]" comment, we are ok with the sentence as written and don't need to confirm anything further.

<!--[if !supportLists]-->3. <!--[endif]-->Kimberly Marshall would sign the Intercept Letter on behalf of IESO.

Victor

Victor Buza | Senior Counsel
Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[ieso.ca] | Twitter: IESO_Tweets[twitter.com] | LinkedIn: IESO[linkedin.com]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: John Kim [mailto:John.Kim@ofina.on.ca]

Sent: October 24, 2017 4:11 PM
To: Tom McKinlay (MAG); Victor Buza
Cc: Lisa Stein; Anthony Martinello; Michael Boll; Gavin He
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Tom, Victor,

I don't yet have final go ahead but we are close so sharing the latest version. Pls. advise if any issue with the attached. Copying Michael at Tom's request.

Also for the square bracketed part [Energy to confirm], pls. advise if any issue with that part as well.

Pls. also let me know who at IESO would sign.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

<Intercept Letter MOE_OFA_IESO Fully Executed - Nov 6 2017.pdf>

From: Anna Strathy
To: Ronald Kwan
Cc: Usman Zahid
Subject: Re: Meeting with Energy
Date: Monday, June 11, 2018 10:00:22 PM

Hi Ron, Gadi met with Serge and OPG today. All were in agreement that IESO should use the OFA loan to pay down the deferral account. Serge was going to communicate that direction to IESO.

Anna

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Jun 11, 2018, at 2:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
>
> As discussed, IESO is looking to clear the anticipated $566 million in the deferral account arising from the April and May periods. Of that, currently, IESO has drawn $256 million from the OFA facility and would need to draw a further $310 million in about a week when the May settlement amounts are cleared.
>
> With respect to the email chain that I discussed with you and Gadi, while it only made its way to CEFD this morning, OPG had emailed CMD on Friday. So, in the intervening period, this issue may have already been resolved as something to wait on for direction from the in-coming government.
>
> Ron
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** June-11-18 12:44
> **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>
> **Subject:** RE: Meeting with Energy
>
> Hi Anna,
>
> As you may recall, the IESO has several financing facilities, two from the OEFC and two from the OFA.
>
> The OFA ones have been used for interim financing for the IESO deferral account. When the deferral account was established, the IESO deferral account from the OFA

was for up to $975 million, but that was replaced with two facilities – the $975 M facility was reduced to $475 million, and a new facility for $2 billion was established, with the latter focussed on short term financing of the IESO deferral account.

As with all OFA loans to public bodies, the OFA received a directive from the Minister for them (see attached for the $2 Bn facility).

Ron

From: Anna Strathy
Sent: June-11-18 12:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Meeting with Energy
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From: Ronald Kwan
To: Anna Strathy
Cc: Usman Zahid
Subject: Re: Meeting with Energy
Date: Monday, June 11, 2018 11:56:59 PM

Thanks Anna.

Ron

On Jun 11, 2018, at 10:00 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

> Hi Ron, Gadi met with Serge and OPG today. All were in agreement that IESO should use the OFA loan to pay down the deferral account. Serge was going to communicate that direction to IESO.
>
> Anna
>
> --
> Anna Strathy
> Special Policy Advisor to the CEO
> Ontario Financing Authority
> 416.325.8032
>
> On Jun 11, 2018, at 2:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:
>
> > Hi Anna,
> >
> > As discussed, IESO is looking to clear the anticipated $566 million in the deferral account arising from the April and May periods. Of that, currently, IESO has drawn $256 million from the OFA facility and would need to draw a further $310 million in about a week when the May settlement amounts are cleared.
> >
> > With respect to the email chain that I discussed with you and Gadi, while it only made its way to CEFD this morning, OPG had emailed CMD on Friday. So, in the intervening period, this issue may have already been resolved as something to wait on for direction from the in-coming government.
> >
> > Ron
> >
> > ---
> >
> > **From:** Ronald Kwan
> > **Sent:** June-11-18 12:44
> > **To:** Anna Strathy <Anna.Strathy@ofina.on.ca>
> > **Cc:** Usman Zahid <Usman.Zahid@ofina.on.ca>

Subject: RE: Meeting with Energy

Hi Anna,

As you may recall, the IESO has several financing facilities, two from the OEFC and two from the OFA.

The OFA ones have been used for interim financing for the IESO deferral account. When the deferral account was established, the IESO deferral account from the OFA was for up to $975 million, but that was replaced with two facilities – the $975 M facility was reduced to $475 million, and a new facility for $2 billion was established, with the latter focussed on short term financing of the IESO deferral account.

As with all OFA loans to public bodies, the OFA received a directive from the Minister for them (see attached for the $2 Bn facility).

Ron

From: Anna Strathy
Sent: June-11-18 12:29
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: Meeting with Energy
Importance: High

Hi Ron,

Gadi's been invited to a meeting with Deputy Imbrognu and Ken Hartwick this afternoon to discuss the IESO deferral account – per your call with Gadi this morning. Gadi was hoping to get the answers to two questions before the meeting: 1) how big is the IESO line of credit (LOC)? 2) Does an increase to the LOC require a Minister's directive?

Anna

Anna Strathy
Special Policy Advisor to CEO
Ontario Financing Authority
1 Dundas Street West, 14th Floor
416.325.8032 | anna.strathy@ofina.on.ca

From: Anna Strathy
To: Ronald Kwan
Subject: Re: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:32:25 PM

Thanks Ron. I'm following up with Gadi.

--
Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 25, 2017, at 4:32 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi Anna,
>
> I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.
>
> In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?
>
> Ron

From: Ronald Kwan
To: Ken Kandeepan
Subject: Re: OFHP Deck
Date: Sunday, June 11, 2017 1:46:59 PM

Hi Ken,

Thanks. Good points. I think we'd been thinking of it as ceteris paribus, but better to delete the point given the government's balanced budget and related positioning.

Ron

On Jun 11, 2017, at 12:18 PM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Thanks Ron, looks pretty good. I have some minor suggested changes as follows:
>
> Page 15: "The OFA's borrowing is also affected by the shift from funding the social programs from the rate base to being government-funded". These expenses are already part of the fiscal plan and since the Government is projecting a balanced budget, the shift of these expenses from the ratepayer to the taxpayer does not impact our borrowing program. Suggest that this be deleted.
>
> Page 16 last bullet: "offset by increased earnings of OPG from sub-debt interest revenue" I would revise as follows: "Upon consolidation, offset by increased earnings of OPG from sub-debt interest revenue"
>
> That's it.
>
> Thanks
>
> Ken k
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Saturday, June 10, 2017 3:19 PM
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Subject:** OFHP Deck
>
> Hi Ken,
>
> As you know, it was suggested that there be a presentation on the FHP for the OFA Board/ARMC.
>
> Attached is a work-in-progress deck that staff are working on. It does not get into great detail, outlining the elements of the FHP, with a bit more on the GA financing structure and the OFA touchpoints on borrowing for the equity injection and notes the credit

facility for IESO. Risks are also high-level, and it does not get into accounting risk, leaving that discussion as one between the AG and Province, as was positioned at the OEFC AC. I might think there may be verbal discussions.

Comments welcome.

Ron

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: Re: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx
Date: Saturday, June 10, 2017 3:59:23 PM

Sure thing. Thanks. John

On Jun 10, 2017, at 3:52 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> Yes, please loop in OPCD.
>
> I think the section Toby added has important information, but think about making it more reader-friendly.
>
> Thanks,
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** June-10-17 3:30 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
> **Subject:** OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v2_Markup.docx
>
> Hi Ron,
>
> Pls. see attached latest briefing note on the request for indemnities. The section added by Toby, I think, is very helpful.
>
> On the accounting, we were thinking of sharing this with OPCD and have them add a section, if they wish to do so. Also, we discussed internally to share this with CMD and/or FTD as they are doing fair bit of work on that front.
>
> Thanks,
>
> John

From: Gadi Mayman
To: Ronald Kwan
Cc: Anna Strathy
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 11:45:41 PM

Looks good. There's still an x instead of 2 at the bottom of page 4 in s.4.

Gadi

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:11 PM
To: Gadi Mayman
Cc: Anna Strathy
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

From: Kennedy, Nancy (MOF)
To: Ronald Kwan
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 10:26:28 PM

Thanks Ron.

Has this all gone through ENE?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:13 PM
To: Kennedy, Nancy (MOF)
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

FYI on the OIC to enable the OFA credit facility requested by IESO.

Ron

From: Ronald Kwan
Sent: May-30-17 10:11 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there

are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package<file:///\\ofina.on.ca\ofadfs\Users\CEF\Hydro%202017\IESO\Financing\IESO-OFA%20-%20FHP%20Line%20of%20Credit\LRC%20Draft%20Package>

Thanks,
Gavin He

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Bruno Amara
To: Ronald Kwan
Cc: John Kim; Shajee Kathirgamanathan; Salman Qadir; Gavin He
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 8:08:37 PM

Ok thx. We'll connect back with Legal first thing tomorrow and send it on.

Sent from my iPhone

On May 30, 2017, at 8:02 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Thanks Bruno, et al.
>
> I accepted most of the edits (and reversed one).
>
> If you are okay with it, it could be sent as a draft to the DMO.
>
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** May-30-17 6:18 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** RE: OIC s22 CIPA - OFA-IESO - LRC package
>
> Hi Ron
>
> Sorry, as I was looking at clean versions I noticed a couple of other needed edits. E.g. making end date 2047 consistent across documents. Please see attached. I went out on a limb and updated the French translation in 4- CIPA OIC, but will alert legal tomorrow morning to check everything. I'll hold off on clean versions for now pending a read through.
>
> Bruno
>
> ---
>
> **From:** Bruno Amara
> **Sent:** Tuesday, May 30, 2017 6:01 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** RE: OIC s22 CIPA - OFA-IESO - LRC package

Ron

see attached with markups. I will send clean versions as well.

Thanks
Bruno

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 4:41 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:

Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

<1 - CIPA - OIC s22 - OFA_FHP - LRC_MinistryApprovalForm v7_Markup.doc>

From: Gadi Mayman
To: Ronald Kwan
Cc: Anna Strathy
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package
Date: Tuesday, May 30, 2017 5:20:13 PM

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>

Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package

Thanks,
Gavin He

From: Kennedy, Nancy (MOF)
To: Ronald Kwan
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package
Date: Wednesday, May 31, 2017 6:34:40 AM

I am okay with the draft so go ahead. I think it's good for them to comment early.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 11:16 PM
To: Kennedy, Nancy (MOF)
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

Not the draft, as of yet. They are aware of the requirement and ask by IESO (and included in the TB report back TB assessment note and noted in the TB Minute in early May), but it would be an MOF submission, as under CIPA and the OFA.

Scott took a look at the draft. He said it looked fine, on a skim.

We can share the draft as is, if you're okay with it.

Ron

-----Original Message-----
From: Kennedy, Nancy (MOF) [mailto:Nancy.Kennedy@ontario.ca]
Sent: May-30-17 10:26 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

Thanks Ron.

Has this all gone through ENE?

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Ronald Kwan
Sent: Tuesday, May 30, 2017 10:13 PM
To: Kennedy, Nancy (MOF)
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Nancy,

FYI on the OIC to enable the OFA credit facility requested by IESO.

Ron

From: Ronald Kwan
Sent: May-30-17 10:11 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Latest draft attached.

Ron

From: Gadi Mayman
Sent: May-30-17 5:20 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>
Subject: Re: OIC s22 CIPA - OFA-IESO - LRC package

$2 billion makes sense to me.

Gadi.

From: Ronald Kwan
Sent: Tuesday, May 30, 2017 5:07 PM
To: Gadi Mayman
Subject: FW: OIC s22 CIPA - OFA-IESO - LRC package

Hi Gadi,

Just an FYI. It's a work in progress, but the DMO wanted to see a draft for today, which we will try to do.

I'm inclined to just have the amount as $2 bn, to meet the IESO request for the FHP-specific facility, unless there are other reasons/needs to expand the authority for other OFA purposes that you are aware of.

Ron

From: Ronald Kwan
Sent: May-30-17 16:41
To: Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: RE: OIC s22 CIPA - OFA-IESO - LRC package

Hi,

I started a markup.

Ron

From: Gavin He
Sent: May-30-17 11:19
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca<mailto:Shajee.Kathirgamanathan@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>
Subject: OIC s22 CIPA - OFA-IESO - LRC package

Hi Ron,

Please find attached the LRC package for an OIC authorizing the Minister of Finance to lend to the OFA. In order for the OFA to lend to the IESO as part of the proposed Fair Hydro Plan Act, the OFA borrows from the Province (Minister of Finance). The OIC is being obtained under section 22 of the Capital Investment Plan Act.

The package is getting sign-off from MOF legal at the moment, and it's aiming to get yours and Gadi's sign off today in order to get this to DMO to make sure this will be on June 27th LRC date. MOF legal has already reviewed the package, so I do not expect any further changes from them. I will provide you the hard copy of the package once Legal signed off on that.

The documents are also saved here:
Z:\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\LRC Draft Package<file://\\ofina.on.ca\ofadfs\Users\CEF\Hydro%202017\IESO\Financing\IESO-OFA%20-%20FHP%20Line%20of%20Credit\LRC%20Draft%20Package>

Thanks,
Gavin He

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Ronald Kwan
To:	Gavin He
Cc:	Bruno Amara; Salman Qadir
Subject:	Re: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED
Date:	Tuesday, June 27, 2017 2:43:43 PM
Attachments:	Ministry of Energy s28 request - response letter_v2_Markup.doc OFHP_GA - OPG IESO Indemnities - FAA s28 - Memo CEO-DM_Markup_v3.doc

Hi,

Some comments and suggestions on the attached.

Ron

From: Gavin He
Sent: June 27, 2017 1:42 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron,

In addition to the BN, we have drafted the attached memos and response letters as part of the approval package. MOF Legal has reviewed and we have incorporated their edits in the attached version.

Please review and let us know if you are good with this. The documents are also saved under below folder:

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Regards,
Gavin He

From: Bruno Amara
Sent: Tuesday, June 27, 2017 9:58 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron

Sorry, here is latest. There was a small change yesterday in indemnity coverage, where OPG also wanted covered director, officers, employees of a financing entity (but not the financing entity itself), if they are also employees of the corporation or its subsidiaries.

There is also still some back and forth this morning between MoF Legal and Energy legal to clarify some things.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 5:55 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Bruno/Toby,

FYI – attached is the finalized package for the OPG/IESO indemnities s.28. We've sent this up to our DMO (flagging that OPG Agreement is still subject to MOF/OFA confirmation re: revised wording at section 2).

The Memo, CL table, and business case incorporate all comments from OFA.

I'll let you know once this package is signed by our Minister and ready to send over to MOF.

Many thanks again for your ongoing assistance on this.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel.: 416 325-1590
Fax: 416 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél. : 416 325-1590
Téléc. : 416 325-1595

Ontario

June , 2017

The Honourable Glenn Thibeault
Minister of Energy
900 Bay Street, 4th Floor
Toronto ON M7A 2E1

Dear Minister Thibeault,

Thank you for your letter requesting approval under section 28 of the *Financial Administration Act* of the Indemnity Agreements in favour of the IESO, its directors, officers, and employees, and in favour of OPG, OPG's subsidiaries (other than any financing entities as defined in the *Ontario Fair Hydro Plan Act, 2017*) and their respective directors, officers, and employees.

In response to your request, I am attaching the approval, under section 28 of the *Financial Administration Act,* of the Indemnity Agreements for OPG and the IESO in order to allow ~~for~~ them to comprehensively participate in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Yours sincerely,

Charles Sousa
Minister

c: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority
Ronald Kwan, ADM, Corporate and Electricity Finance Division, OFA
Serge Imbrogno, Deputy Minister, Ministry of Energy

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

June , 2017

MEMORANDUM TO: Scott Thompson
Deputy Minister of Finance

FROM: Gadi Mayman
Chief Executive Officer

SUBJECT: **Section 28 Approval for Indemnity Agreements In Favour of OPG and IESO**

Attached for your review and consideration is a memo to the Minister of Finance recommending that the Minister approve, pursuant to section 28 of the *Financial Administration Act* (*FAA*), the Ministry of Energy's request to provide indemnities in favour of Ontario Power Generation (OPG) and the Independent Electricity System Operator (IESO) to support their participation in the implementation of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act").

In implementing the OFHP, OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP business activities and corporate mandates. They believe this could subject them to the risk of claims that they are not acting in the best interest of the corporation or in "good faith" with respect to their obligations to their respective corporations.

The statutory immunities provided under the *Electricity Act, 1998* and the OFHP Act prohibit an action or other civil proceeding from being commenced against the enumerated persons for any act done in good faith in the exercise or performance of their duties. However, nothing precludes a person from bringing an action or other civil proceeding against these persons causing them to incur costs in defending the claim (for example, arguing that the act was not carried out in "good faith"). The Indemnity Agreements requested under this request would ensure that if a claim is brought against ~~the~~ OPG, OPG's subsidiaries (except for a financing entity), the IESO or their respective directors, officers and employees as a result of carrying out their roles in implementing the Ontario Fair Hydro Plan, they are fully protected for any costs, losses etc., subject to the limitations provided for in the Indemnity Agreements.

…2

IESO and OPG have stated that these indemnities are required for their participation in the OFHP Act.

Commented [KR(1]: Is this the wording they have used? Should we be using the wording in the Energy Business Case?

Ministry of Energy states that the risk of the Province providing the indemnities is undeterminable and unquantifiable at this time, due to uncertainty around possible claims under the Indemnities. However, the risk is mitigated by the existence of statutory immunities under the *Electricity Act, 1998*, for IESO, and under the OFHP Act, for OPG, pre-existing protection for director, officers and employees under insurance and the limitation of indemnity to claims arising from IESO's and OPG's respective roles in implementing the OFHP.

Ministry of Energy also notes that in the event that an indemnity claim does arise and a payment is required, they would be unlikely to be able to support these payments and would need to return to TB/MBC for an increase in its allocation.

Below is a brief summary of the indemnities:

- The indemnity is being given in favour of "Protected Persons" which comprises IESO and OPG, and OPG's subsidiaries (excluding the financing entity) as well as their respective directors, officers and employees, and agents of the IESO and directors, officers, trustees and/or employees of a financing entity if he or she is also a director, officers or employee of the corporation or one of its subsidiaries.
- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.
- The indemnity does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person.
- The Indemnity Agreement includes a waiver of claim provision. This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan.

…3

Attached is a briefing note for your consideration. Should a briefing be required, staff would be pleased to discuss this matter at your convenience.

Gadi Mayman

Attachments

c. Ronald Kwan

From: Ronald Kwan
To: Gavin He
Cc: Bruno Amara; Salman Qadir
Subject: Re: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED
Date: Tuesday, June 27, 2017 3:49:24 PM

Thanks All.

Ron

From: Gavin He
Sent: June 27, 2017 3:36 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron,

We are good with your edits and attached are the clean copies of the memos and the response letter.

Regards,
Gavin He

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 2:44 PM
To: Gavin He <Gavin.He@ofina.on.ca>
Cc: Bruno Amara <Bruno.Amara@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>
Subject: Re: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi,

Some comments and suggestions on the attached.

Ron

From: Gavin He
Sent: June 27, 2017 1:42 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: RE: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron,

In addition to the BN, we have drafted the attached memos and response letters as part of the approval package. MOF Legal has reviewed and we have incorporated their edits in the attached version.

Please review and let us know if you are good with this. The documents are also saved under below folder:

S:\Users\CEF\Hydro 2017\Electricity Prices\Mitigation Proposals\Debt Financing the GA\Implementation\OFHP_GA - OPG IESO Indemnities\OFA Approval Package

Regards,
Gavin He

From: Bruno Amara
Sent: Tuesday, June 27, 2017 9:58 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Ron

Sorry, here is latest. There was a small change yesterday in indemnity coverage, where OPG also wanted covered director, officers, employees of a financing entity (but not the financing entity itself), if they are also employees of the corporation or its subsidiaries.

There is also still some back and forth this morning between MoF Legal and Energy legal to clarify some things.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 5:55 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: OPG/IESO Indemnities - S.28 Approvals Package - FINALIZED

Hi Bruno/Toby,

FYI – attached is the finalized package for the OPG/IESO indemnities s.28. We've sent this up to our DMO (flagging that OPG Agreement is still subject to MOF/OFA confirmation re: revised wording at section 2).

The Memo, CL table, and business case incorporate all comments from OFA.

I'll let you know once this package is signed by our Minister and ready to send over to MOF.

Many thanks again for your ongoing assistance on this.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Ronald Kwan
To: Malle Hanslep (MOF)
Cc: Tobias P. Whitfield (MOF); John Kim
Subject: Re: OPG/IESO Indemnities
Date: Tuesday, May 23, 2017 5:36:09 PM

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Malle Hanslep (MOF)
Cc: Tobias P. Whitfield (MOF); John Kim
Subject: Re: OPG/IESO Indemnities
Date: Tuesday, May 23, 2017 5:36:07 PM

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Hanslep, Malle (MOF)
To: John Kim; Tobias P. Whitfield (MOF); Ronald Kwan
Subject: Re: OPG/IESO Indemnities
Date: Tuesday, May 23, 2017 5:34:37 PM

Should we say 1pm?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: John Kim
Sent: Tuesday, May 23, 2017 17:27
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Subject: RE: OPG/IESO Indemnities

Works for me as well. That reminds me that the guarantee is lead by OFA's CMD staff. But if you'd like a policy side perspective, happy to provide our input.

John

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Tuesday, May 23, 2017 4:47 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OPG/IESO Indemnities

Yes that would be fine with me

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Whitfield, Tobias P. (MOF)
Sent: Tuesday, May 23, 2017 16:28
To: Kim, John (OFA); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: May 23, 2017 4:18 PM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

Hi Toby,

We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.

Any time is good for a chat.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, May 23, 2017 4:13 PM
To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
Subject: OPG/IESO Indemnities

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
Toby

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From:	Hanslep, Malle (MOF)
To:	Tobias P. Whitfield (MOF); John Kim; Ronald Kwan
Subject:	Re: OPG/IESO Indemnities
Date:	Tuesday, May 23, 2017 4:46:51 PM

Yes that would be fine with me

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Whitfield, Tobias P. (MOF)
Sent: Tuesday, May 23, 2017 16:28
To: Kim, John (OFA); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.

Toby

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

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: May 23, 2017 4:18 PM
To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)
Cc: Hanslep, Malle (MOF)
Subject: RE: OPG/IESO Indemnities

Hi Toby,

We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.

Any time is good for a chat.

Thanks,

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, May 23, 2017 4:13 PM
To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
Subject: OPG/IESO Indemnities

Hi,

We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities

relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.

It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.

Thanks
Toby

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

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Whitfield, Tobias P. (MOF)
To: Ronald Kwan; Malle Hanslep (MOF)
Cc: John Kim
Subject: Re: OPG/IESO Indemnities
Date: Wednesday, May 24, 2017 8:47:10 AM

That works for me too.

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: Ronald Kwan
Sent: Tuesday, May 23, 2017 5:36 PM
To: Hanslep, Malle (MOF)
Cc: Whitfield, Tobias P. (MOF); Kim, John (OFA)
Subject: Re: OPG/IESO Indemnities

Hi,

That time works for me.

Ron

> On May 23, 2017, at 4:46 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:
>
> Yes that would be fine with me
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Whitfield, Tobias P. (MOF)
> Sent: Tuesday, May 23, 2017 16:28
> To: Kim, John (OFA); Kwan, Ronald (OFA)
> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
>
> John – maybe we could have a telephone call tomorrow. I am not sure what Malle's availability is, but perhaps we can discuss before or after the discussion about the Guarantee that is scheduled for 2-3 tomorrow afternoon.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: May 23, 2017 4:18 PM
> To: Whitfield, Tobias P. (MOF); Kwan, Ronald (OFA)

> Cc: Hanslep, Malle (MOF)
> Subject: RE: OPG/IESO Indemnities
>
> Hi Toby,
>
> We just received the material this morning and are reviewing. We were about to reach out to you as we felt that where there are financial implications, MOF Legal should be involved.
>
> Any time is good for a chat.
>
> Thanks,
>
> John
>
>
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Tuesday, May 23, 2017 4:13 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Ronald Kwan <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: OPG/IESO Indemnities
>
> Hi,
>
> We were contacted by TBS legal and have been forwarded some materials regarding some potential indemnities relating to the implementation of the hydro rate mitigation legislation. It sounds like the proposed indemnities would cover OPG and IESO as well as their directors and employees in connection with the financing related activities that those entities would be carrying out under the new legislation. We have also received some materials relating to these indemnities.
>
> It appears that MOF will need to be involved in this, so I am wondering if you have been involved in these discussions and we are wondering if you are available to discuss the status.
>
> Thanks
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> 777 Bay Street, 11th Floor
> Toronto, ON, M5G 2C8
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Bruno Amara
Cc: Gavin He; Salman Qadir
Subject: Re: OPG/IESO indemnity Responses to OFA Questions
Date: Tuesday, June 27, 2017 10:08:03 AM

Hi Bruno,

Please share with OPCD / TBS.

Also, is there more on why the wording with respect to reasonable due diligence?

And should the "low" assessment in the TB AN from the weekend be revised, as previously marked?

Thanks,
Ron

On Jun 27, 2017, at 9:28 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> Attached for your review is the draft briefing note that we have been working on with MoF Legal. I also want to share back with OPCD on a statement regarding their check with OPG and IESO on accounting treatment. As is the statement is 2nd hand from Energy.
>
> Thanks
> Bruno
>
> ---
>
> **From:** Bruno Amara
> **Sent:** Tuesday, June 27, 2017 9:25 AM
> **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Subject:** RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.
>
> Thanks
> Bruno
>
> ---

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 8:39 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this

indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara

> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>

> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.
>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)

> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.
>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>

>
>
>
>
> _____
>
> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03_clean.docx>

From: Ronald Kwan
To: Bruno Amara
Cc: Gavin He; Salman Qadir
Subject: Re: OPG/IESO indemnity Responses to OFA Questions
Date: Tuesday, June 27, 2017 9:51:37 AM

Hi Bruno,

Do we have a revised draft or final submission package from Energy yet?

Thanks,
Ron

On Jun 27, 2017, at 9:28 AM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> Attached for your review is the draft briefing note that we have been working on with MoF Legal. I also want to share back with OPCD on a statement regarding their check with OPG and IESO on accounting treatment. As is the statement is 2nd hand from Energy.
>
> Thanks
> Bruno
>
> ---
>
> **From:** Bruno Amara
> **Sent:** Tuesday, June 27, 2017 9:25 AM
> **To:** Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Subject:** RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> I merged our edits. Please see attached. At this point I will share with ADM for his comments. I will also follow up with OPCD on the statement regarding their check with OPG/IESO on accounting treatment.
>
> Thanks
> Bruno
>
> ---
>
> **From:** Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> **Sent:** Tuesday, June 27, 2017 8:39 AM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>;

Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Sorry for not attaching yesterday. Please find attached.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 26, 2017 5:04 PM
To: 'Bruno Amara'; Hanslep, Malle (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Bruno,

Please find attached a markup of the note. I have made some changes to the organization and tried to streamline the note. We think there should also be a section on mitigation measures, and perhaps that can incorporate some of the existing note, plus anything that can be added from Energy's materials. There is still some work to do on the analysis part, but I wanted to make sure you had a head start on what I have done so far.

Best,
Toby

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

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 10:24 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi attached

Is a markup and relatively clean version of the file that Toby sent on Saturday. Most comments and the section 5 reference is removed.

Thanks

Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:43 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks. As soon as you send it back we can make more comments.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 26, 2017 9:39 AM
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Cc: Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

OK Thanks. Yes, will delete s.5 reference. We'll edit version Toby sent to me on Saturday morning and send back.

Thanks
Bruno

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Monday, June 26, 2017 9:15 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I have also reviewed the note and have some suggestions to assist with make it shorter and more concise.

I don't think that we need to mention s. 5 because it doesn't apply to this indemnity. S. 5 requires a joint agreement by the 2 Ministers which is not the case here so I suggest we delete the references to this.

Can we remove the watermark as it makes it hard to read. It's still marked as a draft.

Maybe it would be helpful to accept all the font changes and remove the comments that are no longer required and then we can work from that version.

Thanks.

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June 25, 2017 12:20 PM
To: Whitfield, Tobias P. (MOF)
Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks for comments and edits.

I'm wondering about language that I had added in the "Previous Direction on Indemnity for IESO and OPG" section. In that part, I note that language in s.5 (2) of the Act around Protection and Assurances might be general direction covering these indemnities. On re-reading I'm wondering if any of the language in s.5 can be seen as providing general direction/coverage for the current indemnity agreement.

The "including" statement in s.5(2) is clearly about the IESO and vendor performance, but 5(2) is not limited to that. However, s.5(2) language says ["Minister and Minister of Finance may together enter into Agreements....with]" . The Agreement in question is just Minister of Energy and the parties. I'm not sure that s.28 approval satisfies the "together" part.

Also S.5(3) is about indemnifications, but my read was this was indemnifying debt rather than persons.

Thanks
Bruno

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Sunday, June 25, 2017 10:16 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Please see attached my comments up to this point on the indemnity note. I have started to work on the analysis part of the note, as I think with the many changes in the note we have some duplication and could tighten that part up, so note that this markup does not reflect any changes to that part.

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

This e-mail, including any attachment, was intended for a specific recipient. It may contain information that is confidential or exempt from disclosure, it may have been provided from one government to another in confidence, or it may be subject to privilege, including solicitor-client privilege. Any privilege that exists is not waived. If you are not the intended recipient: (1) do not distribute it to another person or use it for any purpose, and (2) delete it and advise me by return e-mail or telephone of your doing so.

> _____
> From: Bruno Amara [Bruno.Amara@ofina.on.ca]
> Sent: Friday, June 23, 2017 10:53 AM
> To: Whitfield, Tobias P. (MOF)
> Cc: Hanslep, Malle (MOF); Kim, John (OFA); Salman Qadir; He, Gavin (OFA)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby
>
> Attached is our revised note (before review of materials just sent by Harkamal). We have added a Considerations and Risks section upfront after the Recommendation. We thought it would be good to have these summarized in one place. But let us know if this structure works for you.
>
> Bruno
>
>
>
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 10:22 AM
> To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
> Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions

>
> Hi
>
> I just spoke to Harkamal. We should be receiving the revised business case shortly.
>
> Bruno
>
> From: Bruno Amara
> Sent: Friday, June 23, 2017 9:47 AM
> To: Tobias P. Whitfield (MOF)
<Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Cc: Malle Hanslep (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; John Kim
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir
<Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Gavin He
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> I want to get back to Harkamal through email with a couple of comments including your comment below regarding excluding the financing entity. Our comment is mainly to respond to their question back to us about inconsistencies between the contingent liability table and the approval request note. In particular, the Liability table stated the probability of liability as low while the business case noted risk indeterminable (albeit with some mitigating factors). As well the table noted maximum financial exposure will be linked to the OPG financing entity's debt offerings. It isn't clear from the note that potential claims are limited to debt offerings or indeed if the claims would necessarily directly related to debt offerings.
>
> Was there anything else you wished to add?
>
> Also we are revising the briefing note based on what we have so far and hope to send it to you this morning, for review and to add any further considerations or risks.
>
> Thanks
> Bruno
>
> From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
> Sent: Thursday, June 22, 2017 4:11 PM
> To: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>
> Cc: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>

> John,
>
> I spoke with Harkamal and I mentioned our one significant comment was likely to be with respect to explicitly excluding any financing entity from the Indemnity. Other than that I don't anticipate we will have any comments on the draft.
>
> Harkamal also did say that they are revising the business case and will circulate updated drafts as soon as they are ready.
>
> Toby
>
> Tobias Whitfield
> Counsel, Legal Services Branch
> Ministry of Finance
> tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
> Phone: 416-325-1456
>
> From: John Kim [mailto:John.Kim@ofina.on.ca]
> Sent: June 22, 2017 3:17 PM
> To: Whitfield, Tobias P. (MOF)
> Cc: Bruno Amara; Hanslep, Malle (MOF)
> Subject: FW: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Toby,
>
> Just looking to get a sense from your side. My read is that they do not want to resubmit with updated information.
>
> Would you be OK with providing comments on the agreements, as Harkamal mentions below?
>
> John
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 2:29 PM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> My Deputy Director has approved the responses I sent below and she had no additional substantive comments.

>
> Also, I want to flag that I was informed by Carolyn that our MO indicated this morning that they are looking to have the indemnity agreements finalized and signed by Tuesday of next week (I understand that MOF Minister will be briefed on Wednesday, which means we can hold the agreements in escrow until then).
>
> Given that there is a push from our MO/DMO to get these signed by Tuesday of next week, I am wondering if you are able to provide me with any comments you/MOF legal have on the agreements today or by early tomorrow at the latest as I will need to send to OPG/IESO for their final review. If there are any difficulties with this on your end, please let me know.
>
> Also, Cindy at OPCD has confirmed that she has now heard back from OPG that the accounting is okay. She also does not expect any issues for IESO on this, but IESO will confirm further.
>
> Thanks very much for your assistance on this file.
>
> Regards,
>
> Harkamal
>
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
> From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
> Sent: June-22-17 9:41 AM
> To: Multani, Harkamal (ENERGY)
> Cc: Kim, John (OFA); Salman Qadir; Whitfield, Tobias P. (MOF)
> Subject: RE: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Harkamal
>
> Thank you. We will review.

>
> Bruno
>
> From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
> Sent: Thursday, June 22, 2017 9:14 AM
> To: Bruno Amara <Bruno.Amara@ofina.on.ca<mailto:Bruno.Amara@ofina.on.ca>>
> Cc: John Kim <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Salman Qadir <Salman.Qadir@ofina.on.ca<mailto:Salman.Qadir@ofina.on.ca>>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
> Subject: OPG/IESO indemnity Responses to OFA Questions
>
> Hi Bruno,
>
> We have finally received all responses from OPG and IESO. Please find attached the consolidated set of responses to your questions.
>
> These questions are in draft form and pending approval but wanted to get them to you in the interests of time.
>
> Please let me know once you have completed your review and whether you have any further comments.
>
> I will let you know once these have been approved on our end and whether there are any further changes.
>
> Thanks,
>
> Harkamal
>
> Harkamal Multani
> Counsel
> Legal Services Branch
> ENERGY/MOI/MEDG/MRIS/ADO
> Email: harkamal.multani@ontario.ca<mailto:harkamal.multani@ontario.ca>
> Tel: 416-212-5409
> THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.
>
>
>
>
>
> _____
>

> This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - June27-v03_clean.docx>

From: Ronald Kwan
To: Bruno Amara
Cc: Gavin He
Subject: Re: OPG/IESO indemnity Responses to OFA Questions
Date: Tuesday, June 27, 2017 3:32:58 PM

Thanks Bruno.

Ron

From: Bruno Amara
Sent: June 27, 2017 3:32 PM
To: Ronald Kwan
Cc: Gavin He
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Ron

I spoke to Toby. As I understand it issue is as follows. OPG and IESO provide corporate indemnities. Case may arise where, say a director, makes a claim against OPG related to FHP work. OPG can then make a claim against the provincial indemnity.

I think concern is not that this in inconsistent with intent of provincial indemnity (to indemnify against claims related to implement PFHP), but rather being clear that claim could be made in this way. On the surface it may be interpreted as OPG passing on costs to the province. Energy does not want to change materials at this point. We can add a clarification bullet in the briefing note. I will draft something and circulate.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:17 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

If there is any ambiguity in the business case, can we clarify what the intent is in the s.28 briefing note?

Thanks,
Ron

From: Bruno Amara
Sent: June 27, 2017 2:55 PM
To: Ronald Kwan
Cc: Gavin He
Subject: FW: OPG/IESO indemnity Responses to OFA Questions

Hi Ron

There is a last minute issue. I don't fully understand but will call legal for an explanation.

Whatever, it is bottom-line is Energy not wanting to change wording at late hour and us making call if we are OK with this. Just a heads up but I'll try and understand this better and get back to you.

Bruno

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, June 27, 2017 2:51 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I had a follow up call with Harkamal. Energy is pushing back on revising the business case. They think that given the late notice, and that there is not a substantive change, they are uncomfortable revising the briefing materials, but have agreed to follow up with an email outlining their understanding. Please let me know if you are ok with that approach.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 2:00 PM
To: 'Bruno Amara'
Cc: 'Salman Qadir'; Kim, John (OFA); He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

I spoke with Harkamal, and she indicated that she now believes that OPG and the IESO would be subject to a claim on the indemnity to cover a claim made by a director, officer or employee on an indemnity provided by the corporation, and that she understands it was the policy intention to cover such a claim under the Provincial indemnity. I asked her to revise the business case to make that

clear.

I want to check with you, as I think that it is important to make sure that this point is clear. I am not sure that it would make sense to not cover such a claim, while covering claims made directly against the corporation. However, I also think that the way it is set out to first have the claim against the corporate indemnity is a bit confusing if that is the intent, except to the extent that it gives an opportunity for such a claim to first be covered by any relevant insurance policy that the corporations may have.

Please let me know if you have further thoughts on this. Otherwise, I believe that Energy will forward a revised business case that can be included in the package.

Toby

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

From: Whitfield, Tobias P. (MOF)
Sent: June 27, 2017 9:51 AM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA); Hanslep, Malle (MOF)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal,

It has occurred to me that even though we require the use of existing indemnities before calling on the Provincial indemnity, if a director/officer/employee of OPG or IESO made a claim on the OPG/IESO indemnities, that would allow the OPG/IESO to make a claim on the Province's indemnity (if not covered by an insurance policy).

Is this a correct interpretation and has this possibility been discussed?

Thanks
Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:46 PM
To: Whitfield, Tobias P. (MOF); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)

Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Toby – as discussed – OPG revised section 2 (see highlighted language) so that any directors, officers, employees of a financing entity are still included in the definition of "Protected Person" where he/she is a director, officer, employee of OPG or OPG's Subs.

Other than this, their changes for the most part were more word smithing. I've highlighted in yellow the changes OPG agreed to stand down on.

Thanks very much again,

Harkamal

From: Whitfield, Tobias P. (MOF)
Sent: June-26-17 4:34 PM
To: Multani, Harkamal (ENERGY); Bruno Amara
Cc: Salman Qadir; Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Harkamal – sure, I am available and in my office.

Toby

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

From: Multani, Harkamal (ENERGY)
Sent: June 26, 2017 4:23 PM
To: Bruno Amara
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Thanks very much for this Bruno – I'll send you over a finalized package of everything once Carolyn approves it.

Toby also, just a heads up – there is one outstanding substantive change that OPG has come back with. Do you have a few minutes to discuss before end of day?

Please let me know.

Thanks,

Harkamal

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-26-17 4:18 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

See attached proposed edits. I don't believe they are substantive.

Thanks
Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Monday, June 26, 2017 3:45 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno – just following up – do you have any comments on this as I will need to send to Carolyn before 5.

Many thanks,

Harkamal

From: Multani, Harkamal (ENERGY)
Sent: June-26-17 10:46 AM
To: 'Bruno Amara'
Cc: 'Salman Qadir'; Whitfield, Tobias P. (MOF); Kim, John (OFA); He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

As discussed Friday, here is the cover memo. Could you please review and let me know if you have any comments on this by this afternoon? I've tried to address all of the items OFA had requested be addressed in this.

I am hoping to send you an updated draft of the entire s.28 package later this afternoon.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: Multani, Harkamal (ENERGY)
Sent: June-23-17 10:43 AM
To: Kim, John (OFA)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

Attached is the updated business case and Contingent Liabilities Table. The Cover memo will follow shortly. I have tried to address all of the comments you had previously sent as well as incorporate the information from OPG and IESO's responses to your questions.

If you could please review and let me know if you have any further comments by end of day today it would much appreciated so that I can make any further edits necessary and get you a revised copy on Monday.

I know people have been encountering issues with their emails, so if you cannot access these documents, please let me know and I will try to resend.

As requested, I am also re-sending you the draft Indemnity agreements.

Thank you,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409

THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 6:10 PM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Thanks for the update. Although I am off for a few days starting tomorrow, Bruno will lead the review.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 6:06 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi John,

Apologies - for some reason, your email only popped up in my email inbox at 5:01pm (I note the time stamp below states 11:50am).

I did speak to Toby earlier and flagged that I will be sending updated drafts (pending further changes based on any comments you may have on the actual indemnity agreements) of the business case, exhibit A and memo tomorrow morning based on the information from OPG and IESO.

On our end I will need to get the indemnity agreements back to OPG/IESO early tomorrow to give them time to consider the further changes. Once the agreements have been finalized, we can further update the draft s.28 materials as needed on Monday/Tuesday next week and have our Minister send over the finalized package.

Please let me know if these next steps work for you.

Thank you,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-22-17 11:50 AM
To: Multani, Harkamal (ENERGY)
Cc: Salman Qadir; Whitfield, Tobias P. (MOF); Bruno Amara; He, Gavin (OFA)
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal,

Further to this, could you give us a sense of when the updated draft package could be sent to us for review? Correct me if I am not mapping the next steps, etc. right but based on the information provided by OPG, Energy would be pulling together the updated business case, the contingent liability table and draft submission memo. We are still reviewing the answers included in the attached file but wanted to get a sense of the path forward and the timeline.

Thanks,

John

From: Bruno Amara
Sent: Thursday, June 22, 2017 9:41 AM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: OPG/IESO indemnity Responses to OFA Questions

Hi Harkamal

Thank you. We will review.

Bruno

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Thursday, June 22, 2017 9:14 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Salman Qadir <Salman.Qadir@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: OPG/IESO indemnity Responses to OFA Questions

Hi Bruno,

We have finally received all responses from OPG and IESO. Please find attached the consolidated set

of responses to your questions.

These questions are in draft form and pending approval but wanted to get them to you in the interests of time.

Please let me know once you have completed your review and whether you have any further comments.

I will let you know once these have been approved on our end and whether there are any further changes.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim
Subject: Re: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 12:30:45 PM

Hi,

I thought his note had landed on the s.22 option after stating that a s.28 option would require an appropriation being in place. But I may be mis-remembering. And it was only a draft, and may not have been a formal And final analysis.

Ron

On Jun 13, 2017, at 12:26 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> James had suggested a s22 in which case any indemnity payments would be made under s12 of FAA (allows for indemnity payment from CRF). But I don't think a current appropriation was required in the s22 / s12 option. The potential appropriation discussion in that not was a bit confusing as it seemed to tie the amount to deferral amounts. I'm not sure that they are necessarily directly related. (But this is one of the points of clarification we have requested form OPG/IESO through Energy legal)
>
> MoF Legal was fairly clear in their opinion that this had to be under s.28 - assuming agreement that this should be a Minister of Energy rather than Minister of Finance request. And they are of the opinion that approval for appropriation is requested if an indemnity is called upon. (attached fyi is some explanation that Legal provided to us).
>
> As noted earlier, I revised the draft note (attached) to make explicit this assumption and I will request specific review of this by TBS (I'll resend to Legal as well). We are also sharing with OPCD re: accounting concerns, FTD/CMD mainly to keep them in the loop on the indemnity discussions given the other discussions e.g. provincial guarantee, PiLs exemption.
>
> Bruno
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Tuesday, June 13, 2017 12:00 PM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** RE: OPG/IESO indemnity

Thanks Bruno.

James' draft note from May had cited an FAA requirement. Is that not actually a requirement in this instance?

Ron

From: Bruno Amara
Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim
Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>

Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO

Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)

Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca

Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<MOF Leagl Explanation of s22 and s28 etc.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx>

From: Ronald Kwan
To: Bruno Amara
Cc: John Kim
Subject: Re: OPG/IESO indemnity
Date: Tuesday, June 13, 2017 1:11:58 PM

Thanks Bruno.

Ron

On Jun 13, 2017, at 12:55 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

> Hi Ron
>
> Energy had requested s28. And Yes, James had suggested a s22. It wasn't totally clear why but TBS they seemed concerned about Sections 11.3(1) of the FAA which states that no agreement or undertaking shall be entered into in a fiscal year that would result in a charge to an appropriation for that fiscal year in excess of the amount available under that appropriation. TBS noted that the potential amount was undetermined and therefore not clear that Energy would have expense room if indemnity called upon. So they suggested the alternate s22, s12. And then they decided they weren't dealing with the request.
>
> We asked MoF Legal for their opinion. Wrt. to s11.3, MoF legal noted, that there is no indication that Energy is paying an indemnity this fiscal so no indication that it will be in excess of appropriation.
>
> Bruno
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Tuesday, June 13, 2017 12:31 PM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** John Kim <John.Kim@ofina.on.ca>
> **Subject:** Re: OPG/IESO indemnity
>
> Hi,
>
> I thought his note had landed on the s.22 option after stating that a s.28 option would require an appropriation being in place. But I may be mis-remembering. And it was only a draft, and may not have been a formal And final analysis.
>
> Ron

On Jun 13, 2017, at 12:26 PM, Bruno Amara <Bruno.Amara@ofina.on.ca> wrote:

Hi Ron

James had suggested a s22 in which case any indemnity payments would be made under s12 of FAA (allows for indemnity payment from CRF). But I don't think a current appropriation was required in the s22 / s12 option. The potential appropriation discussion in that not was a bit confusing as it seemed to tie the amount to deferral amounts. I'm not sure that they are necessarily directly related. (But this is one of the points of clarification we have requested form OPG/IESO through Energy legal)

MoF Legal was fairly clear in their opinion that this had to be under s.28 - assuming agreement that this should be a Minister of Energy rather than Minister of Finance request. And they are of the opinion that approval for appropriation is requested if an indemnity is called upon. (attached fyi is some explanation that Legal provided to us).

As noted earlier, I revised the draft note (attached) to make explicit this assumption and I will request specific review of this by TBS (I'll resend to Legal as well). We are also sharing with OPCD re: accounting concerns, FTD/CMD mainly to keep them in the loop on the indemnity discussions given the other discussions e.g. provincial guarantee, PiLs exemption.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 12:00 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Thanks Bruno.

James' draft note from May had cited an FAA requirement. Is that not actually a requirement in this instance?

Ron

From: Bruno Amara

Sent: June-13-17 10:59
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi Ron

Yes, that is the response from TBS although as you note there is some ambiguity. TBS raises the question of how Energy would cover an indemnity and raises the question of mitigation strategies. I don't know what that would look like if potential amounts are undetermined.

The current draft note does have a comment that this issue needs some clarification. But it may be more effective to explicitly add our current understanding that 1) an appropriation is not required at this time 2) if a payment is required at some point in the future Energy would need to present a plan to cover the expense or, request an expense increase through TBC. We were planning to circulate a draft note with TBS, OPCD and others this morning. I will specifically request confirmation from TBS on this point.

I will also ask for clarification on the need for a mitigation strategy. If this is required, it sounds to me like TBS does need to get involved with the ministry on this.

Bruno

From: Ronald Kwan
Sent: Tuesday, June 13, 2017 10:33 AM
To: John Kim <John.Kim@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
Subject: RE: OPG/IESO indemnity

Hi John, Bruno,

Has the response been incorporated into the BN?

And, while it is not clearly stated, is the response from TBS that it's a question how Energy would cover the indemnity if called on, but not a TB requirement that an allocation or line be approved in order for an indemnity to be provided, since other ministries have the same situation, with unquantifiable exposures and no allocation requirements?

Thanks,
Ron

From: John Kim
Sent: June-13-17 10:26
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: OPG/IESO indemnity

I recalled that we have clarified with TBS.

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Friday, June 09, 2017 11:07 AM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – The situation is the same in other ministries. As the potential amount is not quantifiable, they do not have (or know the amount) of allocation requirements. The questions I raised were just thoughts, sorry to confuse things.

Thanks,
Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-09-17 9:41 AM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA); Strang, James (TBS)
Subject: RE: OPG/IESO indemnity

Hi Chris

Thanks, that's helpful. But in regard to the question you raise, I'm not sure how the ministry can have a voted allocation to cover the potential expense or demonstrate any specific mitigation strategy when they say the potential amount in unquantifiable. Do you know if TBS has dealt with these situations previously to see how this is handled?

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis

Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: Skubel, Chris (TBS) [mailto:Chris.Skubel@ontario.ca]
Sent: Thursday, June 08, 2017 5:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; James Strang (MOF) <James.Strang@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Bruno – It is not a requirement for ENERGY to have a separate/specific line related to the indemnity payment, although ENERGY could choose to create a line (the token placeholder you've referenced) which would require a TB/MBC minute if that is the approach they would like to take.

The broader issue is that ENERGY does not have the voted allocation to cover the indemnity should it occur. So the question to the ministry is how will it be covered and what are the mitigation strategies?

In addition, the ministry did receive voted appropriation for the Fair Hydro Plan but this allocation is under executive control (e.g. cannot be used for other purposes than originally specified) and if ENERGY were to try to use attempt to use some of this $ in the event that an indemnity payment occurred they would also require a TB minute.

Let me know if this has helped or if you'd like to discuss.

Chris

From: Bruno Amara [mailto:Bruno.Amara@ofina.on.ca]
Sent: June-08-17 2:05 PM
To: Skubel, Chris (TBS)
Cc: Kim, John (OFA)
Subject: FW: OPG/IESO indemnity

Hi Chris,

We are working with Energy to process the IESO/OPG indemnity agreements. We were advised by MoF Legal that this should be under S.28 of the FAA. Based on this we will work that through with Energy. The

one question that we do have is whether Energy will need a line item for a potential future indemnity payment. E.g., one of those lines with a token $1,000 placeholder. If they do not already have an appropriate line, I presume this would need TBC approval. I'm trying to figure out the answer to this. If you have any insight that would be welcome. In the meantime, fyi, I've attached some questions we have sent to Energy with respect to the draft indemnity agreements.

Thanks
Bruno

Bruno Amara
Sr. Manager, Financial and Regulatory Analysis
Electricity Finance Branch
Corporate and Electricity Finance Division
Ontario Financing Authority

Tel: 416-325-1489
Email: bruno.amara@ofina.on.ca

From: John Kim
Sent: Thursday, June 08, 2017 1:49 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; 'Montgomery, Kaitlin (MOF)' <Kaitlin.Montgomery@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Pls. see attached with our questions and comments. I'm also copying those you have identified as your clients on the requests from IESO and OPG.

Thanks,

John

From: John Kim

Sent: Wednesday, June 07, 2017 8:08 PM
To: Harkamal Multani (MOF) <Harkamal.Multani@ontario.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Thanks….will get back to you tomorrow on your Qs. Some of the comments we have, I'd characterize, as significant but that's my interpretation.

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June-07-17 5:29 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Hi John,

I believe that the board meets on the 14th. I will double check, but I think the significance is to have the approval so the board can formally approve/confirm the agreement for execution on that date. We would want to execute the IESO and OPG indemnities at the same time.

Since we still need to get the final okay from OPG/IESO on the indemnities with the edits I sent to you, I am wondering whether in the interests of time you can confirm if you have any significant and substantive concerns with the revised indemnity provisions (specifically the clause 2(c) and 8 – as I do not think there were outstanding concerns with the other provisions). Wondering if we can send over the indemnity agreements to IESO and OPG for their final okay while you complete your review).

Please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 4:56 PM
To: Multani, Harkamal (ENERGY)
Cc: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Bruno Amara; Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Hi Harkamal,

Just to update you, we have reached out to your clients on the request to connect at policy level today. In terms of the questions and comments, we are still working to pull together a list. Hopefully soon and we hope to share it with you and clients together.

I have a question regarding your requested timeline of June 13. I know there was a mention of board meetings scheduled but what are the factors driving the timeline? Is the timeline the same for both OPG and IESO?

Thanks,

John

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Wednesday, June 07, 2017 9:48 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF)

<Kaitlin.Montgomery@ontario.ca>
Subject: RE: OPG/IESO indemnity

Thanks very much John.

Best,

Harkamal

From: John Kim [mailto:John.Kim@ofina.on.ca]
Sent: June-07-17 8:55 AM
To: Multani, Harkamal (ENERGY); Whitfield, Tobias P. (MOF)
Cc: Kwan, Ronald (OFA); Hanslep, Malle (MOF); Montgomery, Kaitlin (MOF)
Subject: RE: OPG/IESO indemnity

Thanks Harkamal.

We will review and aim to have at least a preliminary set of questions/comments later today.

John

From: Multani, Harkamal (ENERGY)
[mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, June 06, 2017 6:16 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Cc: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca>
Subject: OPG/IESO indemnity

Hi Toby, Ronald and John,

I understand that, Ronald and John, you were looking for the indemnity agreements and s.28 business case and exhibit A. I've attached those here for your review.

Please note that the indemnity agreements are pending OPG and IESO final confirmation. I was hoping to send the edits in the attached back to them once MOF had confirmed they have no further issues with provisions 2(c) and 8 in the attached agreements. These edits are based on ongoing discussions with OPG. The IESO indemnity has been revised to reflect the language of the OPG indemnity. Could you please let me know at your earliest whether there are any outstanding issues with the indemnities on your end so that I can send these back to OPG and IESO

for their final review and confirmation? We will need their approval of the form of the agreements before we submit for s.28 approval.

If you have any questions, please let me know.

Thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
ENERGY/MOI/MEDG/MRIS/ADO
Email: harkamal.multani@ontario.ca
Tel: 416-212-5409
THIS MESSAGE IS CONFIDENTIAL AND MAY CONTAIN INFORMATION THAT MAY BE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE. If you are not the intended recipient, please delete this message together with any attachments.

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

<MOF Leagl Explanation of s22 and s28 etc.docx>

<OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx>

From: Ronald Kwan
To: Ken Kandeepan
Cc: Anna Strathy; Gadi Mayman
Subject: Re: Part 2 OFHP Regs - Draft Sub and RAN
Date: Sunday, June 25, 2017 12:09:29 PM

Hi Ken.

Agreed that there is confusion in the description of the credit facility.

On the issue of interest, my recollection of the Thursday meeting was that Energy said it would need to return with a regulation on that in the summer.

Ron

On Jun 25, 2017, at 11:40 AM, Ken Kandeepan <Ken.Kandeepan@ofina.on.ca> wrote:

> Hi Ron
>
> Have a couple of comments; both the note and the submission refer to the OIC as allowing the OFA to give loans to the IESO up a max of $2B, the arrangement we envisage with IESO is the extension of a credit facility, it's a subtle difference however, may be usful to apply the correct terminology.
>
> The second issue is something the OFA has raised before, the need for proposed regulations to allow for the collection of interest in the initial period before the Clean Energy Adjustment kicks in. In the action items from the June 22nd Rate Mitigation Implementation meeting that Gadi attended has the following:
>
> • OPG/IESO accountants and lawyers meeting to work through accounting issue on the need for revenue to pay interest and fees in the period when clean energy adjustments cannot be charged to rate payers
>
> It would be appropriate to include the same in the submission's list of items to be covered by the proposed regulations.
>
> Thanks
>
> Ken k
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Saturday, June 24, 2017 5:47 PM
> **To:** Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: Fwd: Part 2 OFHP Regs - Draft Sub and RAN

Begin forwarded message:

From: "Strang, James (TBS)" <James.Strang@ontario.ca>
To: "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
Cc: "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
Subject: Part 2 OFHP Regs - Draft Sub and RAN

Hi,

Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early afternoon.

James

From: Ronald Kwan
To: Gavin He
Cc: Bruno Amara
Subject: Re: Part 2 OFHP Regs - Draft Sub and RAN
Date: Monday, June 26, 2017 3:22:39 PM

Yes please.

Ron

On Jun 26, 2017, at 10:03 AM, Gavin He <Gavin.He@ofina.on.ca> wrote:

> Hi Ron,
>
> We are good with your edits. Would you like me to send it back to TBS?
>
> Thanks,
> Gavin He
>
> ---
>
> **From:** Ronald Kwan
> **Sent:** Monday, June 26, 2017 7:24 AM
> **To:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** RE: Part 2 OFHP Regs - Draft Sub and RAN
>
> Hi,
>
> A few suggestions, as attached.
>
> Thanks,
> Ron
>
> ---
>
> **From:** Bruno Amara
> **Sent:** June-24-17 10:39 PM
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Gavin He <Gavin.He@ofina.on.ca>
> **Subject:** RE: Part 2 OFHP Regs - Draft Sub and RAN
>
> Hi Ron
>
> In RAN note pg 3, the IESO credit facility is discussed. I added the detailed explanation (slightly expanded version of explanation in powerpoint). But not sure if this is needed.
>
> I note that in the RAN note and TB submission the credit facility discussion is in terms of "IESO is in discussion with OFA to do this" But hasn't the Minister already signed the

OIC? But Agreement is still to come.

And a comment on some wording in the TB. The language has been that facility is for short- to medium-term financing, which includes the purpose below. May just be confusing that it is referred to as longer-term financing in the note. It may be semantics as I think they mead longer than short-ter.

Pg 14

IESO may also require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.

Bruno

From: Ronald Kwan
Sent: Saturday, June 24, 2017 5:46 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>
Subject: Fwd: Part 2 OFHP Regs - Draft Sub and RAN

Begin forwarded message:

> **From:** "Strang, James (TBS)" <James.Strang@ontario.ca>
> **To:** "Afshin Malekzadeh (MOHLTC)" <Afshin.Malekzadeh@ontario.ca>
> **Cc:** "Chris Skubel (MGS)" <Chris.Skubel@ontario.ca>, "Nina Arbabzadeh (EDU)" <Nina.Arbabzadeh@ontario.ca>, "Patrick Laughton (MOF)" <Patrick.Laughton@ontario.ca>, "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>, "Karen Hughes (MGS)" <Karen.Hughes@ontario.ca>, "Nadine Petsche (MOF)" <Nadine.Petsche@ontario.ca>, "Helen Graham (MOF)" <Helen.Graham@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Paul Kaufman (MOHLTC)" <Paul.Kaufman@ontario.ca>, "Nick Smook (MOF)" <Nick.Smook@ontario.ca>, "Didem Proulx (MTCU)" <Didem.Proulx@ontario.ca>, "Ronald Kwan" <Ronald.Kwan@ofina.on.ca>, "John Kim" <John.Kim@ofina.on.ca>
> **Subject: Part 2 OFHP Regs - Draft Sub and RAN**
>
> Hi,
>
> Attached is Energy's Draft Submission received (please keep confidential as not approved by Energy). The second file is a draft assessment note for review and comment. After consolidating feedback from central agencies, I'm intending to share with Energy later on Monday. The item is at Treasury Board Tuesday in the early

afternoon.

James

From: John Kim
To: Ronald Kwan
Cc: Bruno Amara
Subject: Re: Policy question re OFHP Credit Facility Agreement
Date: Friday, August 04, 2017 5:20:23 PM

I don't believe there is any risk more material than usual and as for the provision for the draw. This is the govt policy and ofa is supporting per its normal policy.

Sent from my iPhone

On Aug 4, 2017, at 3:56 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> Is it fair to say that the earlier IESO (and original OPA) credit facility was unsecured because the OPA (and IESO) had access to the rate base for the items that the facility was bridging for (e.g., RPP)?
>
> The issue here might be that the timing of the sale of the regulatory asset is subject to some uncertainty, and that access to the ratebase is deferred for a few years.
>
> Is there any suggestion of a risk of a provision being required to be taken against draws? Under normal circumstances, of course, this is supposed to be a revolving and short-term facility – fair to say?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** August-04-17 15:42
> **To:** Ronald Kwan <Ronald.Kwan@ofina.on.ca>
> **Cc:** Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Subject:** FW: Policy question re OFHP Credit Facility Agreement
>
> Fyi. In case you hear back on this….
>
> ---
>
> **From:** John Kim
> **Sent:** Friday, August 04, 2017 3:42 PM
> **To:** William Tan <William.Tan@ofina.on.ca>; Bruno Amara <Bruno.Amara@ofina.on.ca>
> **Cc:** Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
> **Subject:** RE: Policy question re OFHP Credit Facility Agreement

Hi Lisa, William,

I am OK as long as the proposed approach is consistent with OFA's lending policy and practices. We have generally not opined on the details of the lending agreement, as we have been communicating.

I do want to copy Ken and Mike to ensure that they are onside, as well.

Thanks,

John

From: William Tan
Sent: Friday, August 04, 2017 3:24 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Policy question re OFHP Credit Facility Agreement

Hello Bruno and John,

If you wish, I can arrange a call between legal and CEFD today.

From: Lisa Stein
Sent: Friday, August 04, 2017 2:36 PM
To: Bruno Amara <Bruno.Amara@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Jean-Francois Beaupre <Jean-Francois.Beaupre@ofina.on.ca>
Subject: Policy question re OFHP Credit Facility Agreement
Importance: High

Hi Bruno and John,

I have some additional information pertaining to the structure of the OFA loan to IESO re: OFHP. While this information adds context, it doesn't address the policy question of whether an unsecured loan is appropriate (based on the extent of the insolvency risk) for this regulatory asset.

The current draft FHP Credit Facility Agreement is consistent with the OFA Lending Policy (last revised and approved April 16, 2010 – *status TBC*), which provides that except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, the OFA will generally lend on an unsecured basis (apart from the intercept

provision) in respect of loans made by the OFA to public bodies (IESO is a public body for the purposes of CIPA). As such, the structure of this loan is consistent with the Policy (subject to my note below re: intercept provision). In my review of the supporting policy documentation, including the LRC minute, I didn't see any reference to a secured lending structure and I don't believe that there is any direction requiring this to be a secured loan. That being said, I query whether OFA CEFD staff are comfortable with this approach (see below).

In terms of the intercept provisions, which are required pursuant to s. 23 of CIPA, I have asked Toby from MOF Legal if they are aware of any agreement between the Ministry of Energy and the IESO agreeing that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the IESO amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this loan agreement (as required by CIPA)? Are you aware of any such agreement? However, even if there were such an agreement in place, it is unclear to whether adding intercept provisions to the credit facility agreement, will provide further comfort. I plan to discuss this matter further with MOF Legal.

Based on the foregoing (and pending any additional information that Toby may obtain from his discussions with the Ministry of Energy), I defer the following question to CEFD staff:

> **Are you comfortable with the current structure of this loan as an unsecured loan (and the risk that this may entail)?** This decision ultimately needs to be made by business/policy people.
>
> <!--[if !supportLists]-->• <!--[endif]-->**If yes,** the next draft of the agreement will be available in the next day or so to send to IESO for review. I will work with MOF Legal to draft/leverage intercept provisions to mitigate this risk (as far as possible, based on the foregoing). We are also working on the permitted liens, *pari passu* and negative pledge provisions of the draft agreement, as previously discussed.
>
> <!--[if !supportLists]-->• <!--[endif]-->**If no,** additional Ministerial/TB direction, and a new legal agreement (likely with the assistance of external legal counsel) will be required. This will take additional time.

Please do not hesitate to contact me if you would like to discuss further.

Thank you,

Lisa

Lisa N. Stein

Legal Counsel
Ontario Financing Authority
416-325-2320

****
This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.
****