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Ministry of the Attorney General
Briefing Note
Legal Services Division
Legal Services Branch – ENERGY/MEDEI/MRI

ISSUE

The Initial Public Offering of Hydro One, the sale of Brampton Hydro transaction and the share sale to the Power Workers' Union and Society of Energy Professionals will require numerous documents to be signed on behalf of the Crown in right of Ontario. The Minister has authority to sign these documents but volume and timing may make it more practical for that authority to be delegated in part.

OPTIONS

1. The Minister could sign all documents.
2. The Minister could sign key documents and delegate his authority to sign other documents to the Deputy Minister or another Ministry of Energy official.

CONSIDERATIONS

Authority

The *Ministry of Energy Act, 2011* gives authority to the Minister to sign agreements and to delegate that authority.

7. (3) The Minister or, subject to the direction and control of the Minister, the Deputy Minister may, in respect of any matter for which the Minister has responsibility under this or any other Act, …

(f) enter into agreements for and in the name of the Crown;

11. (1) Where, under this or any other Act, responsibility or authority is granted to or vested in the Minister, the Minister may in writing delegate that responsibility or authority to the Deputy Minister or to any public servant who works in the Ministry, subject to the terms and conditions that the Minister sets out in the delegation.

Options

1. **The Minister could sign all documents.**

The Minister could sign all documents required.

- The first documents were required in advance of August 31, 2015 to assist the Brampton transaction and the IPO. The Minister signed these documents.
- The volume of documents is significant, as reflected in the attached indicative list included as Appendix B.
- The timing of execution may not be flexible. The Minister may be required at the Closings of the transactions, which may need to be scheduled around his availability.

- Some documents may not be available until the last minute and arrangements may need to be made through the course of the transaction to get documents to the Minister.

2. The Minister could sign key documents and delegate his authority to sign other documents to the Deputy Minister or another Ministry of Energy official.

- Key documents could include:
  - Shareholder Declarations and Resolutions to Hydro One Inc., to Hydro One Limited, Hydro One Inc. and to the Brampton Holding Company;
  - the Preliminary, Amended and Restated, Final and Supplemental Prospectuses;
  - the Governance Agreement;
  - the Registration Rights Agreement;
  - the Confidentiality Agreement;
  - the Lock Up Agreement;
  - the Underwriting Agreement;
  - Share Purchase Agreements in the Brampton transaction and the PWU and Society Transactions (completed).
- Documents that the Minister could delegate authority to sign could include:
  - bring down certificates;
  - directions as to transfers of funds;
  - receipts for shares or proceeds; and
  - ancillary documents.
- Delegation of authority does not prevent the Minister from signing anything; rather, the Minister retains his own authority in the context of any delegation.
- This option provides some flexibility in terms of timing, although there may be little flexibility in the context of any particular key document.
- A draft delegation is attached.
- In practical terms, the delegation of authority should name people who are available to sign documents.

Documents Required Prior to the Closing of the IPO (many required for the Reorganization of Hydro One)

1. Certificate for the Amended and Restated Prospectus (**Required by October 9)**
2. Amended By-law No. 1 of Hydro One Inc. (**Required by October 9)**
3. Underwriting Agreement **(Targeting October 28)**
4. Special resolution of the Province, as the sole shareholder of Hydro One Inc., to amend the articles of Hydro One Inc. to, among other things, remove the requirement for the Minister of Energy’s consent to issue shares of a subsidiary **(Targeting October 29)**
5. Receipt of the Province for $800 million dividend **(Targeting October 30)**
6. Resolution of the Province, as the sole shareholder of Hydro One Inc., authorizing the repurchase of the HOI Preferred Shares as part of a step in the broader restructuring of HOI **(Targeting October 31)**
7. Share Purchase Agreement in respect of the repurchase of the HOI Preferred Shares in exchange for HOI Common Shares **(Targeting October 31)**
8. Receipt of the Province for share certificate **(Targeting October 31)**
9. Share Purchase Agreement pursuant to which HOL acquires all of the issued and outstanding shares of HOI in exchange for HOL Common Shares and Preferred Shares issued to the Province **(Targeting October 31)**

10. Shareholder declaration terminating all shareholder declarations in respect of HOI **(Targeting October 31)**
11. Letter Agreement between the Province and HOI terminating the MOU **(Targeting October 31)**
12. Receipt from Province for shares certificate nos C-2 and [P1]-1 (HOL Preferred and Common Shares) **(Targeting October 31)**

Documents Required for August 31 (COMPLETED)

Amendment of HOI Articles to Add 10% Ownership Restriction

1. Special resolution of shareholder Hydro One Inc. ("**HOI**") amending ownership restriction

Formation of Hydro One Limited

2. Subscription by the Province for Common Shares of Hydro One Limited
3. Resolution of the Province, as sole shareholder of Hydro One Limited, authorizing the Directors to fix the number of Directors within the minimum and maximum provided in the Articles of Incorporation and confirming the election of Directors
4. By-Law No. 1 setting out general conduct of affairs of Hydro One Limited such as Borrowing, Directors, Committees, Dividends and Rights etc.

Formation of Brampton Holdco

5. Subscription by the Province for Common Shares of Brampton Distribution Holdco Inc. ("**Brampton Holdco**")
6. Resolution of the Province, as sole shareholder of the Brampton Holdco, fixing the number of directors and confirming the election of Directors
7. By-Law No. 1 setting out the general conduct of the affairs of Brampton Distribution Holdco Inc. such as Borrowing, Directors, Committees, Dividends and Rights etc.

Brampton Dividend Steps

8. Resolution of Province (as sole shareholder of HOI) authorizing various activities and providing various direction to HOI in connection with the Hydro One Brampton Networks Inc. ("**Brampton**") dividend steps
9. Declaration and Resolution of Province (as sole shareholder of Brampton Holdco) authorizing various activities and providing various direction to Brampton Holdco in connection with the Brampton dividend steps
10. Memorandum of Agreement between Province and Brampton Holdco

PWU and Society Agreements

11. Share purchase agreements with trusts established to the benefit of each of the Power Workers' Union and the Society of Energy Professionals

Updated: October 7, 2015
Date: August 18, 2015

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Ontario

DRAFT DELEGATION OF AUTHORITY
MINISTRY OF ENERGY ACT, 2011

Pursuant to section 11 of the *Ministry of Energy Act, 2011*, I hereby delegate the Minister's responsibility and authority to enter into agreements for and in the name of the Crown to the Deputy Minister and to the Assistant Deputy Minister, Strategic, Network and Agency Policy, who is a public servant who works in the Ministry, subject to the terms and conditions set out herein:

1. Each of the Deputy Minister of Energy and the Assistant Deputy Minister, Strategic, Network and Agency Policy (each an "Authorized Officer") is hereby authorized, on behalf of Her Majesty the Queen in Right of Ontario (Ontario), to enter into any agreements, arrangements or documents as such authorized officer may consider necessary or desirable in connection with or ancillary to:
    a. the Initial Public Offering of Hydro One; and
    b. the sale of Brampton Hydro.

    (together, the "transactions").

2. The Authorized Officers are delegated authority to the extent that the Minister is authorized on behalf of Ontario to execute the documents and it is impractical for the Minister or the Minister is unavailable to execute such documents in his own right within the time required to complete the transactions.

3. The signature of one of the Authorized Officers is required to execute any agreement, arrangement or document.

4. The powers and duties herein delegated may not be further delegated.

5. The Minister retains the power to exercise the delegated authority, powers and duties and to further delegate these powers and duties.

6. This delegation shall not impact any other delegation of authority by the Minister.

7. This delegation is effective on and from the date shown below and shall remain in effect

until revoked or amended or the transactions are completed.

________________________________ _________________________

The Honourable Bob Chiarelli
Minister of Energy

Date

Appendix B – Indicative Signing Requirements

Definitive lists to be provided closer to closing of each transaction

		Timing	Signatory	Delegation
I.	**CLOSING DOCUMENTS***			
A.	IPO DOCUMENTATION			
1.	Shareholder Resolution to amended articles of HOI to add share ownership restrictions	August 31 (Complete)	Minister	
2.	Preliminary Prospectus	September 18 (Complete)	Minister	
3.	Amended and Restated Preliminary Prospectus	October 9	Minister	
4.	Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process	Mid to Late October (Pricing Date)		Recommended
5.	SEDAR Form 6s	Mid to Late October (Pricing Date)		Recommended
6.	Final Prospectus	Mid to Late October (Pricing Date)	Minister	
7.	Supplemental Prospectus	October 29	Minister	
8.	Underwriting Agreement	Mid to Late October (Pricing date - targeting October 28th)	Minister	
	a) Bring Down Certificate for Representations and Warranties in Underwriting Agreement	Mid to Late October (Pricing Date)		Recommended
9.	Lock Up Agreement	Mid to Late October (Pricing Date)	Minister	

10.	Governance Agreement	Early November (Closing Date)	Minister	
	a) Confidentiality Agreement	Early November (Closing Date)	Minister	
11.	Registration Rights Agreement	Early November (Closing Date)	Minister	
12.	Holdco and H1 reorganization documents **[see detailed chart "D" below]**	Late October (Targeting October 31)		
13.	Directions as to transfers of funds or shares	Early November (Closing Date)		Recommended
14.	Receipt for proceeds at Closing	Early November (Closing Date)		Recommended
15.	Over-Allotment Closing Documents	Later November/Early December (Over Allotment Closing Date)		Recommended
B.	PWU/SOCIETY LOANS AND SHARE PURCHASE DOCUMENTATION			
16.	Share Purchase Agreements between the Borrowers and Seller	Complete	Minister	
17.	Bring Down Certificate of Sellers pursuant to Share Purchase Agreements			Recommended
C.	BRAMPTON TRANSACTION			
18.	Shareholder Declaration to HOI: To subscribe for shares of HOBNI to repay capital to HOI To cause HOBNI to obtain a line of credit (including LOC for IESO prudential) To cause HOBNI to obtain insurance To reduce stated capital of HOI by	August 31 (complete)	Minister	

	transfer of long term debt receivables			
19.	Shareholder Declaration to HOI To declare a dividend in Brampton to Province To transfer shares to Brampton Holdco To transfer long term debt receivable to Brampton Holdco	August 31 (complete)	Minister	
20.	Shareholder declaration to Brampton Holdco To require D&O insurance and run off insurance	August 31 (complete)	Minister	
21.	Memorandum of Agreement with Hydro One Brampton.	August 31 (complete)	Minister	
22.	Share Purchase Agreement	Early November	Minister	
23.	Declaration and Resolution to Brampton Distribution HoldCo authorizing its entry into the Share Purchase Agreement	Early November	Minister	
D.	Hydro One Reorganization Documents			
24.	Amended By-law No. 1 of Hydro One Inc.	October 9	Minister	
25.	Special Resolution of the Province approving the Amended Articles of HOI	Late October (targeting October 29)	Minister	
26.	Receipt of the Province for $800 million dividend	Late October (Targeting October 30)		Recommended
27.	Resolution of the Province, as the sole shareholder of HOI, authorizing the repurchase of the HOI Preferred Shares	Late October (targeting October 31)	Minister	

28.	Share Purchase Agreement – sale of HOI Preferred Shares in exchange for HOI Common Shares	Late October (targeting October 31)	Minister	
29.	Receipt of the Province for share certificate	Late October (targeting October 31)		Recommended
30.	Share Purchase Agreement – HOL acquires all of the outstanding HOI shares in return for HOL Common Shares and Preferred Shares	Late October (targeting October 31)	Minister	
31.	Shareholder Declaration terminating all Shareholder Declarations and Resolutions in respect of HOI	Late October (targeting October 31)	Minister	
32.	Letter Agreement between the Province and HOI terminating the MOU	Late October (Targeting October 31)	Minister	
33.	Receipt from the Province for share certificates nos C-2 and P-1 (HOL)	Late October (targeting October 31)		Recommended
	OTHER DOCUMENTS			
	Treasury Board Submission – IPO Implementation Plan	August 25 (complete)	Minister	
	OEB Memorandum of Understanding	TBD	Minister	