Ontario

LEGISLATION AND REGULATIONS COMMITTEE: MINISTRY APPROVAL FORM

LRC Tracking #: OICNA-13315
EVista Tracking #: SUB-NAOIC-2017-02158

Ministry of Energy

Power Worker's Union (PWU) Trust Structure

Order in Council

Profile at a Glance

Priority: Key to Commitment
Public Interest: Moderate
Key Stakeholder Interest: High
New Costs/Burdens: No for Stakeholders; No for Government
New Savings/Opportunities: No for Stakeholders; No for Government

Proposed Items for Review

Order in Council to amend OIC 1166/2015 under the *Legislation Act, 2006*

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC		

Deputy Minister ______________________ Date ______

Minister ______________________ Date ______

s. 1 Proposal and Context

At the time of the initial public offering (IPO) on November 5, 2015, the Province sold 3,756,097 of 81,100,000 Hydro One common shares to two trusts for the benefit of the Power Workers Union (PWU) and loaned one of the trusts (**Trust 3**) $75,000,000 which was used by that trust to purchase the Hydro One common shares at the IPO price and to pay related advisory fees. The other trust (**Trust 4**) financed its purchase with its own resources. The beneficiary of each trust is the PWU.

The Minister of Finance executed the Loan Agreement, and the Minister of Energy executed the Share Purchase Agreement (SPA).

At the time of the original transaction, the concept of implementing protective measures had not yet been decided upon by the PWU, however, PWU brought forward a request in June 2016 to reorganize the ownership structure of Trust 3, which is now in a form that the Province is supportive as it does not impact the Province's rights under the Loan Agreement and the continuing validity and perfection of the pledged Hydro One shares. The revised ownership structure would put in place protective measures to guard against a raid on the PWU for the purpose of gaining access to the Hydro One shares indirectly owned by the PWU. This new structure will ensure that any benefits of the PWU arrangement continue to be for the benefit of the members of the PWU, consistent with the government's objective.

The proposed Order in Council (OIC), recommended by the Minister of Energy, would amend a recital to OIC 1166/2015 to reflect the PWU's new proposed trust structure as described below. OIC 1166/2015 provided the Minister of Finance with the authority to enter into the loan agreement with Trust 3 and related agreements.

s. 2 Approach and Intended Outcomes

Appendix A

In order to ensure that the benefits of the PWU arrangements are ultimately for the members of the PWU, the PWU would settle a new Trust **(Trust 3A)** and would assign its beneficial interest in Trust 3 (i.e., the borrower trust) and its equity interest in Trustee 3 (i.e., the Trustee of the borrower trust) to Trust 3A. PWU would be the sole shareholder of the Trustee of Trust 3A as well as the primary beneficiary of Trust 3A, and the members of the PWU would be secondary beneficiaries of Trust 3A.

The trust deed of Trust 3A would contain provisions that allow for members of the PWU to replace the PWU as primary beneficiaries of Trust 3A upon certain triggering events, including certain steps being initiated to seek administration over the PWU by CUPE or another trade union, an application under labour relations law to displace PWU as the bargaining unit for certain bargaining rights, or a good faith belief by the Protectors that the property of Trust 3A is at risk for seizure. Upon the occurrence of a triggering event, the Trustees of Trust 3A must obtain the consent of certain individuals (Protectors) before making distributions or utilizing the assets of Trust 3A. The Protectors can also replace the Trustees of Trust 3A. This mechanism ensures that PWU members receive the benefits from the shares of Hydro One during a triggering period when income of the Trust (whole or part of the income) can be paid or made payable by the Trust to the benefit of the Secondary Beneficiaries *(see section 2(f) of the Deed of Trust).*

The Protectors are: the President of the PWU; each of the Vice-Presidents of the PWU, in each case, immediately prior to a triggering event, and three additional persons elected by the Chief Stewards of the PWU.

Upon the occurrence of a triggering Event, the Protectors are entitled to remuneration equal to $3000 per month indexed to inflation.

s. 3 Direction and Urgency

An initial request for a new trust structure was made by the PWU in June 2016. Work has been ongoing since then.

After much work over the past 1.5 years, PWU is hoping to close by end of 2017, and the Ministry of Energy and the Ministry of Finance are supportive of this.

s. 4 Impact Assessment and Costs

The transfer of the beneficial interest in Trust 3 and the equity interest in Trustee 3 to Trust 3A does not impact the continuing validity and perfection of the pledged Hydro One shares. The continued existence of Trust 3 and its Trustee, 2477671 Ontario Inc., insures that the Province can:

- enforce the Province's rights under the loan and security
- maintain a valid and perfected first priority lien on the assets of Trust 3 including the pledged shares

- prevent distributions from Trust 3 if value of security is not at least 200% of the loan amount

In addition, each Protector must agree to not take any action that could cause the PWU, the Trustees and/or Trust 3A to not meet their obligations under the SPA or Loan Documents.

PWU has agreed to pay the Provinces legal fees given that the proposed structure was not what the parties had contemplated.

s. 5 Implementation

If the OIC is approved, the Minister of Finance will sign and execute the amended Loan Documents to reflect the new structure.

Documents to be amended are included as Appendices.

s. 6 Delivery and Results Tracking

N/A

s.7 Stakeholder Consultations

N/A

s.8 Other Jurisdictions and Harmonization

N/A

s. 9 Communications

- The proposed Order in Council and subsequent amended loan agreement and new trust structure are not expected to raise communications issues.
- Reactive materials will include high-level key messages such as:

  - The Province's arrangement with the PWU became public on September 17, 2015, when the preliminary Hydro One prospectus was filed.
  - The changes proposed in this Order in Council align with the Province and PWU's objective to ensure any benefits arising from the shares purchased will flow to PWU members.
- Continue to monitor and track:
  - media reactions and editorials
  - incoming correspondence
  - response by opposition MPPs

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Kaitlin Montgomery	416-326-6343
Ministry Legal	Eileen Morin	416-326-1014
Ministry Communications	Sam Lyon	416-327-6541
Assistant or Deputy Minister's Office	Martin Schlaepfer	416-326-7688
Cabinet Office Policy		

Appendices

A. Deed of Trust 3A
B. Second Amendment to the Loan Agreement
C. Loan Agreement
D. Amended and Restated Subordination and Postponement Agreement
E. Amended and Restated Side Letter Agreement
F. OIC 1166/2015
G. Proposed OIC