Message

From: Michael Boll [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4811917E15054407B665FE16D12FF415-MICHAEL BOL]
Sent: 2017-04-07 11:57:27 AM
To: Anthony Martinello [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3fb7d76317b34780b15d96309b995c31-Anthony Mar]
Subject: FW: Legislation - Accounting comments

fyi

-----Original Message-----
From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: April 07, 2017 11:25 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); ASHBOURNE, STEPHEN
Cc: LEE John -TREASURY; Hill, Krista; Ramchandani, Rima; Myers, Jonathan; 'Feldman, Michael'; JORDA Jenny -FIN & C CTRL; RYFA Ken -TREASURY; MCAULEY Tyler -LAWDIV; Alan Hibben; Michael Boll; 'Peter Hamilton'; Emes, Aaron
Subject: Fw: Legislation - Accounting comments

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Carolyn and Steve - As mentioned to Carolyn, I am forwarding the comments from OPG's accounting group on the legislation for discussion today.

Could we get copies printed out for this meeting?

Regards,

Les

Sent from my BlackBerry 10 smartphone on the Bell network.
From: JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>
Sent: Friday, April 7, 2017 11:17 AM
To: WONG Leslie -LAWDIV
Cc: MAUTI John -FIN & C CTRL; LEE John -TREASURY; RYFA Ken -TREASURY; CHENG Alec -FIN & C CTRL
Subject: Legislation - Accounting comments

Hi Les,

We have reviewed the Legislation as drafted and noted a few fundamental accounting issues that would not achieve the proposed accounting that the Province desires. Please keep in mind that these comments only pertain to the Legislation and there are other accounting conditions that need to be reflected in other agreements (i.e. Trust documents and service agreements) in order for the accounting to work.

1. Amount of involvement by the Minister of Energy in the 'Fair Allocation Plan' (FAP)

Relevant sections of Legislation: Article 7.1 and 7.2

Accounting Principle Required:

* The Legislation must dictate the manner in which the restructured asset would be determined so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset.

Comments:

* Assumption that the FAP will drive the formula which determines how much will be deferred and collection parameters. Current legislation gives the Minister of Energy the power to amend this plan, which in turn gives them the ability to amend the formula. This goes against the terms and conditions of the Province not being able to control how much is deferred, but should be on 'autopilot'. Suggest removing the MOE's ability to amend/restate or terminate plan.

1. Prescriptive nature of the Financing Plan

Relevant sections of Legislation: Article 8 and Schedule 3 and Schedule 4

Accounting Principle Required:

* The Trust must be undertaken by OPG as a business initiative on its merits. Shareholder direction is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise .
* The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot').

Comments:

* Legislation cannot be dictating what the Trust can and cannot do. All funding decisions must be made autonomously by the Trust with no intervention by the Province. Any language in the Legislation about the MOE 'directing' the Financing Entity needs to be removed.
* Suggestion to remove Article 8 from Legislation or keep the language very basic, i.e. a Plan will be created. Management of the Financing Plan should remain solely the activity of the Trust.

1. OEB Involvement

Relevant sections of Legislation: Article 8

Accounting Principle Required:

* No party shall have the ability to remove OPG from its role and authority in the Trust.
* The Province cannot have the right to be able to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs.

Comments:

* The OEB cannot have any involvement with the Financing Entity and OEB involvement should be limited to the IESO level (in terms of recording the Regulatory Asset) and not in the financing process.

1. Restrictions on Regulatory Asset

Relevant sections of Legislation: Article 8.7 and Article 9.3 and Schedule 4

Accounting Principle Required:

* OPG must have the ability to earn variable returns by exercising its authority.
* The Legislation must be written to avoid legal or constitutional challenges and be seen as virtually unchangeable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. OPG needs to be able to keep the residual. This is an important item to ensure accounting is on side.

Comments:

* OPG needs to be able to make money from this initiative, therefore Article 9.3 is problematic (shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services)
* The accounting will not work if OPG is only able to recover incurred costs with no profit component as it would not be viewed as that of a commercial transaction.
* There is a requirement to show that there is variability in the returns that OPG expects to be obtained from the Trust through its power to control the activities of the Trust. It is expected that this variability be built into the management fees. (i.e. not sure how OPG will get returns if the actual debt cost is passed back and anything residual has to be returned to ratepayers)

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