

1. BACKGROUND

IESO – Role in Implementation of Ontario’s Fair Hydro Plan (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.

2. 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 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.

Commented [HM1]: IESO – can you please provide details on the specific risks you are concerned about and what the consequences may be if this indemnity is not provided? How do current indemnities that may already be provided to the protected persons not cover these risks?

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