

Message

To: Multani, Harkamal (ENERGY) [Harkamal.Multani@ontario.ca]
Subject: RE: IESO Indemnity Agreement
Attachments: 20170623- IESO Indemnity Agreement - Draft 4-revised-cln (IESO comment).docx

Hi Harkamal,

I won't be able to get back to you until later this afternoon unfortunately with sign off. There is an internal briefing that wasn't able to be scheduled until later this afternoon.

In the meantime, in response to your questions, the IESO does prefer to have Fair Hydro Plan in the recital defined by reference to the agreements the IESO will enter into to implement the plan. We would also like to include the language in 2(c) relating to securities offerings, but we have modified it slightly to reference the information the IESO may provide to a financing entity in relation to such securities offerings. This is one of the areas where we see that there may be the most risk. I've attached a draft suggesting these changes.

Regards,
Michael

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: June 23, 2017 4:09 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

My Apologies Michael – That was my oversight. Attached are the corrected versions of the agreement (both clean and tracked).

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: Michael Boll [mailto:Michael.Boll@ieso.ca]
Sent: June-23-17 3:55 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

Thank you for this. On a quick review, the most significant change seems to be that the indemnity is no longer provided to the IESO. Can you please provide the rationale for this? This varies from the exchange of letters between the IESO's CEO and the Deputy Minister.

Regards,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: June 23, 2017 3:14 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Hi Michael,

Please find attached the tracked and clean versions of the updated draft of the IESO indemnity Agreement. Anything highlighted in yellow are substantive provisions/changes made coming out of the OPG indemnity agreement. Other changes are less substantive changes, but have been made to align with the language in the OPG indemnity agreements. I think, for the most part, the language/edits in here is language you have previously seen. Also, I would note that most of the substantive changes would be for the benefit of the IESO. I do need your confirmation on the first paragraph and on provision 2(c) and whether the flagged language from the OPG indemnity is necessary for the IESO. If so, we can plug it in.

I apologies for the very quick turn-around on this, but could you please confirm if you have any further comments on these drafts by Monday early afternoon so that we can finalize and have a version ready for our Minister to sign on Tuesday.

I would also note that the attached version is pending Carolyn's review still so there may be some additional minor edits that come your way on Monday or later today. I will keep you posted. However in the meantime if you can begin your review of the attached it would be much appreciated.

If you have any questions, please let me know. I am also happy to set up a call to discuss if it would be more efficient to do so.

Thank you for your ongoing cooperation on this matter.

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: Multani, Harkamal (ENERGY)
Sent: June-22-17 3:20 PM
To: 'Michael Boll'
Subject: RE: IESO Indemnity Agreement

Hi Michael,

We've sent your responses to OFA who is currently reviewing them. I just heard from Carolyn earlier today that our MO would like to have the indemnity agreements finalized and signed by the Minister by Tuesday of next week. I am hoping to hear back from OFA on any outstanding comments they have on the draft indemnity agreements soon and then will send to you for a final review shortly. I just want to flag this timing for you as I know it is extremely tight. If there are any difficulties with meeting this timeline on your end please let me know so that I can communicate to Carolyn.

Thank you,

Harkamal

From: Multani, Harkamal (ENERGY)
Sent: June-19-17 6:05 PM
To: 'Michael Boll'
Subject: RE: IESO Indemnity Agreement

Thanks Michael, I'll let you know if there are further questions. If you could get back to me on the additional question tomorrow that would be much appreciated. If this is not doable, please let 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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: June-19-17 4:17 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

Attached are the IESO's responses to the questions that have been asked. Please let us know if you need anything more.

We will respond to the additional question you have posed in your email below shortly.

Regards,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: June 16, 2017 2:21 PM

To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Hi Michael,

If not today, Monday would be fine as I am also still waiting for responses from OPG (don't think I will hear back from them today).

Also, there is an additional question from OFA/MOF that I think it would be helpful to get IESO's input on, which is: Why the IESO requires indemnity to be given to the corporation (IESO) rather than just its directors, officers and employees. If you could also include this as part of your responses back to us that would be much appreciated. (This question is coming up in light of the Provincial Guarantee that is also being negotiated at this time).

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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: June-16-17 1:33 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

I'm hoping later today, or latest Monday. Does that work on your end?

Regards,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: June 16, 2017 12:49 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Hi Michael,

Just following up on this to see when we can anticipate to receive your responses?

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: Multani, Harkamal (ENERGY)
Sent: June-13-17 4:34 PM
To: 'Michael Boll'
Subject: RE: IESO Indemnity Agreement

Thanks for the confirmation Michael. Please keep me posted.

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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: June-13-17 4:22 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

I wanted to acknowledge receipt of this and let you know we are compiling the answers. Hopefully we will be able to provide most tomorrow.

Regards,

Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: June 09, 2017 4:14 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Hi Michael,

MOF/OFA have posed some questions, which we have determined IESO would be in the best position to answer, with respect to the IESO indemnity agreement. The questions are attached. If you could please review and provide your responses it would be much appreciated. They require responses to these questions as part of their s.28 approvals process.

By way of further update, OFA/MOF are continuing their review of the revised OPG Indemnity so I am still unable to send you a revised draft of the IESO indemnity yet. I will let you know once they have completed their review and will send you a revised version of the IESO indemnity as soon as possible.

If you have any questions or would like to further discuss, please let 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: Multani, Harkamal (ENERGY)
Sent: June-06-17 10:09 AM
To: 'Michael Boll'
Subject: RE: IESO Indemnity Agreement

Hi Michael,

We are still in the process of finalizing the terms of the OPG Indemnity. OPG came back to us with some revised language on provisions we had issues with and we are circulating them internally for review. I will let you know once we've landed on the OPG Indemnity and then will send you an updated IESO indemnity that revises certain provisions to the IESO indemnity to be consistent with what we are giving OPG (again, I think these will all be for the benefit of the IESO, so I don't anticipate any concerns from your end).

I am hoping we will be able to land on this in the next few days or so. If you need anything from me in the interim, please let me know.

Thank you,

Harkamal

From: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: June-05-17 5:08 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal, is there any update on the indemnity agreement?

Thank you,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: May 26, 2017 5:26 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Thanks very much for confirming Michael, we are working out the OPG indemnity, but I will keep you posted once we finalize it and whether there are any further changes needed to the IESO indemnity for consistency.

Have a great weekend.

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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: May-26-17 3:04 PM
To: Multani, Harkamal (ENERGY)
Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

Apologies for the delay in getting back to you on the "agents" reference in the indemnity. We are fine deleting agents from the list of protected persons.

Regards,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]
Sent: May 24, 2017 6:54 PM
To: Michael Boll
Subject: RE: IESO Indemnity Agreement

Thanks for this Michael,

Attached is the revised draft incorporating the changes you outline below. The attached also includes changes to reflect some of the OPG's comments/suggested changes for consistency (yellow portions). Please review and confirm if these

would equally apply in the case of IESO. Please note that if these provisions are in the end not accepted by the Ministry in relation to the OPG indemnity, we will remove them from the IESO indemnity as well to be consistent (in other words the added language in yellow will only be included in the final version of the IESO indemnity only if it is included in the OPG's indemnity). The reason I say this is because we are still discussing OPG's proposed changes internally and with OPG and these changes have not been finally agreed to. There may also be other additions to the IESO agreement following further discussions with OPG tomorrow to ensure consistency between the two indemnity agreements and I will keep you posted on those.

For now, the attached is the latest (and close to final) draft of the IESO indemnity.

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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]

Sent: May-24-17 5:09 PM

To: Multani, Harkamal (ENERGY)

Subject: RE: IESO Indemnity Agreement

Hi Harkamal,

Further to our discussion this afternoon.

Section 2(d)

With respect to Section 2(d), you referenced Section 136(4) of the OBCA as a precedent. The OBCA is a general corporate statute that applies to all OBCA corporations for a vast array of commercial scenarios. The indemnity the IESO is requesting is specific to the implementation of the government's Fair Hydro Plan. As noted in the business case, the proposed legislation would impose new obligations and requirements on IESO, which increases risk to IESO for activities that are not part of the IESO's usual operations. We do not think the IESO should be held to the same standard as set out in the OBCA.

We also don't believe applying the "reasonable grounds" standard in (d) is consistent with the language of 2(c), which only removes the indemnity due to a Protected Person's dishonesty, gross negligence or willful misconduct.

We would therefore proposed 2(d) be amended as follows:

(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.

Section 2(c)

As discussed, we believe our redrafting of this provision is necessary to avoid ambiguity and dispute over when a Protected Person may be disentitled to indemnification. In our view a Protected Person should only be disentitled if the Claim, or portion of the Claim, was the result of a Protected Person's dishonesty, gross negligence or willful misconduct which has been established by a final, non-appealable judgement adverse to the Protected Person. Also, I understand you will be adding some clarification language around securities offerings to be consistent with the indemnity proposed for OPG.

Section 3

We are fine with retaining Section 3(d), with the change from "necessary" to "reasonable". We would like our proposed changes to the remainder of Section 3 to remain. As originally drafted in the government's template, in order to be entitled to indemnity, a Protected Person must take the actions outlined in (a) to (d). A failure to take of those steps would result in an entire loss of the indemnity. The only caveat was a failure to provide prompt notice which only affected the indemnity to the extent of prejudice. Our proposed changes are designed to result in a Protected Party only losing a right to indemnity to the extent that a failure to take any of the required (a) to (d) actions actually results in prejudice to the Province and then only to the extent of such prejudice. We believe this is the intent and does not increase the Province's liability. It serves to only make the Province liable to indemnify to the extent it was not prejudiced by a failure of a Protected Person to take one of the required actions.

Section 5

As discussed, I am fine to reinsert the last part of Section 5.

I will still need to pass the next iteration of the draft indemnity past various people here at the IESO, so it remains subject to further IESO comment.

Regards,
Michael

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]

Sent: May 24, 2017 1:38 PM

To: Michael Boll

Subject: RE: IESO Indemnity Agreement

Hi Michael,

Just to follow-up we had some further comments on the IESO indemnity – please consider and let me know if you are okay with the comments (we are proposing to stick to the original language in some clauses).

If you could get back to me on this at your earliest, it would be much appreciated as we will need to get this agreement finalized before end of week in order to seek our s.28 approvals by June 1st.

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-23-17 6:37 PM
To: Michael Boll
Subject: FW: IESO Indemnity Agreement

Hi Michael,

I've reviewed the attached indemnity and overall do not have any major concerns, but did have some questions/further comments for your consideration and confirmation. If you could take a look at the attached and let me know of your responses to my questions and whether you are okay with the changes I have made (in green) it would be much appreciated. There may be further changes to this indemnity agreement to align with the OPG indemnity agreement, but most of these I think would be for the benefit of the IESO. I will send you a finalized version of the indemnity agreement once we land on my comments attached and also once I've made any further changes to be consistent with the OPG indemnity agreement.

I accepted your changes to the business case. This file is moving quite fast as we are looking to get the s.28 approval by June 1, so your response at your earliest would be very much appreciated.

If you would like to further discuss, I would be happy to set up a call.

Many 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: John Rattray [<mailto:John.Rattray@ieso.ca>]
Sent: May-19-17 2:59 PM
To: Multani, Harkamal (ENERGY)
Cc: Michael Boll
Subject: FW: IESO Indemnity Agreement

Harkamal:

Michael is out of the office today and has asked me to respond on his behalf. As requested please find attached the comments of the IESO on the draft Indemnity Agreement and Business case.

Thank you for the opportunity to comment.

John

John Rattray | General Counsel, Secretary, and Chief Reliability Compliance Officer

Independent Electricity System Operator (IESO) | T: (416) 506-2856

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](#) | LinkedIn: [IESO](#)

From: Multani, Harkamal (ENERGY) <Harkamal.Multani@ontario.ca>

Sent: Friday, May 19, 2017 2:11 PM

To: Michael Boll

Subject: RE: IESO Indemnity Agreement

Hi Michael,

Just following up to see if you have any comments on the draft Indemnity Agreement

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: Michael Boll [<mailto:Michael.Boll@ieso.ca>]

Sent: May-16-17 9:08 PM

To: Multani, Harkamal (ENERGY)

Subject: RE: IESO Indemnity Agreement

Thanks, Harkamal. We will get back to you soon.

From: Multani, Harkamal (ENERGY) [<mailto:Harkamal.Multani@ontario.ca>]

Sent: May 16, 2017 4:12 PM

To: Michael Boll

Subject: IESO Indemnity Agreement

Hi Michael,

Please find attached for your review the Draft Indemnity Agreement we have prepared for IESO in relation to the implementation of the proposed *Ontario Fair Hydro Plan Act*.

Also, as part of the approvals processes on this, we are required to obtain approval under section 28 of the *Financial Administration Act* (Ontario) given that these indemnities create potential contingent liabilities for the Province. We have drafted up a business case as part of the s.28 approvals package but require your input on the risks that IESO may face in carrying out its role under the proposed legislation, if passed. I've attached the specific draft excerpts from our business case which we require your input on here. If you could please review this as well and provide your comments/input that would be much appreciated as well.

We are hoping to get these materials finalized as soon as possible so that we can submit for formal approvals. Thus, if you could get back to us with any comments you may have by end of day Thursday it would be much appreciated. If this timeline is not workable, please let me know.

If you have any questions, or would like to further discuss, please let 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.

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.