Message

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Sent: 2017-05-13 10:07:21 AM
To: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]
Subject: OFHPA. General Regulation --TRANSACTION. Steps,True Up Amount,Regulatory/Investment Asset

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> May 11, 2017.
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> Hi, Michael. (Hi to Jeanette and Anthony too!) I've creating a very rough, initial draft of the General Regulation to be made under the new OFHPA, if approved, and need your assistance with fleshing out what is necessary to include in the regulations. I hope you won't mind my starting with just a few key concepts that I want to get your assistance with. What follows are questions that I'm hoping you can help me with. Having your thoughts on any of them sooner rather than later would be very helpful. Obviously, there's a lot here and I realize that you may all be considering these matters and developing your thinking as we are on our end.

Note: This email was developed to get our outside counsel's views, so kindly bear that in mind.

Happy to have a call with you if you think that that would be a good way to start, but I would like to get your responses, eventually, in writing as I'll want to refer back to them time and time again as I / we put together the draft of the regulation.
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> What follows is an ultra-simplified version of the steps as I see them. To this end, I've likely reduced complexity and sacrificed important details (such as the continuity of each of the concepts with the "reference periods" to which they relate – lets bear that in mind as we work our way through the drafting process).
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> Overview
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> I conceive the General Regulation as providing for any prescribed criteria or methods, calculations and principles (in the commercial context), that must be provided to give the reader of the law the necessary detail to support the implementation of the legislation.
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> While the entire regulation is likely to be re-organized throughout the iterative drafting process, I see the sequencing of the steps in the transaction as follows (let me know where you disagree or where you find my explanation needs to be augmented):
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> 1. Minister to establish Fair Allocation Amount (the "Curve") per s.20 against which most if not all of the FSM's activities are to be [in general terms] based – e.g. see 21(3) 1"…reasonably align with Fair Allocation Amount…". Please provide your input to any principles to be prescribed here?
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> 1. The Minister's Fair Adjustment Amount is modified by the Fair Adjustments per ss. 6-8, 11 and 12). I think the Regulation to be made under Part II, along with the provisions of the Act itself, will inform the Fair Adjustment so I didn't' anticipate our General Regulation having to deal with these elements. Let me know if you agree.
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> 1. The FSM (OPG) then creates their initial Financing Plan (per s.21) and provides the plan to the Minister, but the Minister has no authority to amend, alter or revoke the plan.
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> 1. The FSM would commence incurring funding obligations (per s.21(1), 22(1), respecting the limitation provided for in s.21(4) but please see clause 21(4)(b) relating to prescribing a "limit" – any thoughts on how that limit should be set or the method for establishing? Is it relevant for the next long while?)
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> Do you see any elements to be added to the regulation to support these events or transactions?
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> 1. S. 23 IESO Monthly Deferral: IESO begins experiencing a funding shortfall that stems from the difference between the amounts it must provide to generators/contract counter-parties, etc. per EA .25.33, and the amounts provided by distributors from consumers (due to RPP rates set to recapture less than the Global Adjustment liability calculation would provide for).

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> 1. Regs to capture and record as part of the RA the deferral referable to the period May 1, 2017 through day prior to RA of the Bill
> 2. The section 24 variance account (established by the IESO and approved as to its establishment by the OEB) records the amounts of IESO monthly deferrals, as well as the other adjustments as may be prescribed – these form the basis of the regulatory asset (see s.25), specified portions of which are to be transferred under s.26. Just to begin with, do we have any information on the “other adjustments” to be prescribed (see para 24(1) 3) ?
> 3. Per s.25(2) – The OEB to set rates payable by specified consumers to allow the IESO to recover the balance recorded in the s.24 variance account . We’ll have to create criteria for the or methodology for the OEB to follow here as well. Do you see any elements that we should capture in the regulation to support these steps?
> 4. Timing: The creation of the RA appears to be pretty immediate and occurs prior to any funding obligations being incurred by the FSM or is there a different sequence you see unfolding? I think others may have a much more sophisticated view about the steps that OPG as FSM is going to take immediately to fund the IESO monthly deferrals than do I, so if you could fill in any of the blanks for me on this (to the extent they’ll form the basis of regulation drafting) that would be most appreciated.
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> 1. IESO transfers the specified portion of the RA (which turns into the Investment asset/ subsequent investment interests) to FSM per s.26 and any commercial agreement supporting the conclusive transfer. I am not certain that I see anything I can create in terms of supportive prescribe criteria or methodology for these steps, any input here?
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> 1. FSM purchases investment interest per s. 28 (informed by the attributes provided for in s.29) (note the initial transfer creates the Investment Asset and on subsequent transfers, the value of the IA is added to by additional investment interests purchased by the FSM). The IA (which grows) resides in the SPV/Trust. (Section 29 (1) 2 refers to “other prescribed parties” – any thoughts on this at this time?
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> 1. FSM then incurs the funding obligations in accordance with the Financing Plans referred to in step 4 above. This is, I gather, the real securitization activity that will be supported primarily or almost entirely by commercial agreements. However, given our regulation-making authority (s.38), do you see anything that we should deal with in the General Regulation to support these steps?
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> 1. Recovery: Clean Energy Adjustments are dealt with in sections 13 through 17 and frankly I’ve got to spend a lot more time pouring over those provisions against my initial smatterings on the screen before posting any being able to pose coherent questions (hoping I’ve posed at least some in this email).
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> Timing: Assuming I have captured the sequence of steps in a manner which you generally agree with, I could benefit from some clarification around the timing around steps 1 through 4 versus the things that happen under steps 5 through 8.
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> General assistance with criteria / methods to be included in the general regulation: Having regard to sections 23 through 29, Do you see any specific requirements that we need to provide for in the regulations to further articulate the steps or methodologies to support these steps?
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> Definitions, etc: Foundational Concepts that I really need your help to flesh out:
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> * “Finance Amount”(in all its variants – estimated, actual and just plain old “finance amount”) - Can you help me better understand how we want to use these terms and how they should be expressed in the regulation (e.g. either by just describing them in plain language and / or describing the series of transactions that you see occurring on a monthly basis (i) at the IESO level; (ii) between IESO and FSM/SPV or Trust.
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> * “True-up Amount”: Would you provide me with some instruction as to how the regulations can describe this concept? Are the regulations to create a method for calculating the true-up amount and, if so, how do you see this calculation being expressed in a manner that supports, without duplicating, the legislation. See s.15(2) of the Bill which reads:
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> Regulations re true up amount
> (2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:
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> 1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.
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> 2. The method for determining the true up amount should take into account historical and reasonably foreseeable,
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> i. differences between the estimated and actual finance amount for the applicable reference period,
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> ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and
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> iii. variations in billings due to variations in electricity consumption.
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> Miscellaneous: What other things need to be in the proposed regulations?
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> For example, having regard to Article 6 of the April 14th/17 version of the Blakes Document, here are some things I was considering when reviewing the Blakes document at Article 6:
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> * Definitions: e.g. for true-up period (e.g. referring to the reference period prior to the current reference period)?
> * Semi annual review and adjustment of CEAs by FSM?
> * Inclusions of LDC-level shortfalls (do you mean line-losses? What is meant by this.
> * Exclusions of FE-level leakage (tax, litigation expense, losses):
> * Tie-in with “Period Finance Amount” concept.
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> Thanks for considering the foregoing, Michael,, Jeanette and Anthony, and please do send me what you can as soon as you are comfortable, given we really only have a two or so week period to do most of the drafting.

> Very best,

> James

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