Message

Sent: 2017-05-24 9:14:39 PM
To: Glenn Zacher (GZacher@stikeman.com) [GZacher@stikeman.com]; Peter Hamilton [PHamilton@stikeman.com]; John Rattray [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0c3134c1c2744b1ea8ff0e5ddd13dfe4-John Rattra]
Subject: FW: IESO Indemnity Agreement
Attachments: 20170524-IESO Indemnity Agreement Confidential track changes -ENERGY LSB edits v4.docx

Attached is a revised indemnity agreement. I spoke with Harkamal (Ministry counsel) this afternoon and she largely agreed with the points made in my email below. However Ministry of Energy will need to make the case to Treasury Board to move off the government's standard indemnity.

Also you will see new language that has been added to maintain consistency with what OPG has requested. Harkamal explained what OPG had in their indemnity and I thought it would be best if IESO had consistent language. I've gone through it quickly and it may work as is however it may need a little clean up to the IESO specific context. Please let me know what you think.

I've also added a couple of my own edits with comments to section 2(d). I think Harkamal just lost the tracked changes when she cut and pasted the text from my email.

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

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 th 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

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

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