Message

From: Michael Boll [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4811917E15054407B665FE16D12FF415-MICHAEL BOL]
Sent: 2017-09-08 9:18:42 AM
To: Kim Marshall [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b63a22b42bf14587870d93119a054d88-Kim Marshal]; Anthony Martinello [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3fb7d76317b34780b15d96309b995c31-Anthony Mar]
Subject: RE: IESO letter of credit

Yes, I have already accepted the Thursday meeting. Anthony would be welcome. I was outnumbered at the last one.

From: Kim Marshall
Sent: September 08, 2017 9:03 AM
To: Anthony Martinello; Michael Boll
Subject: RE: IESO letter of credit

I am going to set up some time for us to talk before next thurs. Michael are you able to go to the rate mitigation meeting? I have a peter meeting conflict that that I think I need to do. Perhaps Anthony could also go? thx

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From: Anthony Martinello
Sent: September 07, 2017 11:45 AM
To: Kim Marshall; Peter Hamilton; Michael Boll
Subject: RE: IESO letter of credit

I spoke with May Laureta-Laprira (OPG Sr. Mgr Treasury) this morning. May was in attendance at our Aug 10 between Stikeman, KPMG, OPG and E&Y.

In general we discussed the following:

-if the IESO is to post a L/C

- Likely need for a new regulation to be made to accommodate;
- Need to negotiate what L/C amount is reasonable (supportive data to be analyzed and why);
- I mentioned that the cost to have the L/C would likely be scrutinized – value for money, as this would be likely transparent;
- I mentioned that the IESO still needs to obtain KPMG's view on whether the L/C poses an acctg risk (i.e. risk and rewards of the asset);

-I mentioned that OPG needs to revisit and think hard for no IESO L/C to be posted given the following;

- There is a true-up mechanism that would permit recovery of any short-term missed amounts – OPG has this at their ready;
- There is a reserve account(s) mechanism that could be utilized to establish collections to mitigate any small risk of LDCs going into CCAA;

We also walk thru a verbal example of what occurs during the first 4 years and post 4 years on the CEA. I emphasised that the CEA (post – 4 years) was simply a pass-thru from LDCs to the Financing Entity and the IESO is just a servicer – so I raised that the IESO is not on the hook to OPG for any missed LDCs' amounts.

May did ask if the IESO could get Michel (KPMG) to give his view soon…. on whether the L/C is an acctg issue for the IESO (i.e. does the IESO have an issue due to the risk and rewards not being transferred)

We said we would connect with each other in due course.

Regards.

From: Kim Marshall
Sent: September 07, 2017 7:59 AM
To: Peter Hamilton; Anthony Martinello
Subject: RE: IESO letter of credit

Anthony see if we can get the number down at least!

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From: Peter Hamilton [mailto:PHamilton@stikeman.com]
Sent: September 06, 2017 5:21 PM
To: Kim Marshall; Anthony Martinello
Subject: FW: IESO letter of credit

Peter Hamilton

Direct: +1 416 869 5564
Email: phamilton@stikeman.com

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Wednesday, September 06, 2017 5:17 PM
To: Peter Hamilton; Feldman, Michael
Cc: Glenn Zacher; Myers, Jonathan; Michael Boll; Anthony Martinello (Anthony.Martinello@ieso.ca); LEE John - TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima
Subject: RE: IESO letter of credit

Hi Peter. Looping in the OPG team who I understand will be reaching out to Anthony and Kim at the IESO to discuss the proposal on payment of the debt carrying costs during the moratorium period and the need for some collateral to be posted to cover off LDC credit risk. We look forward to your comments on the MTSA.

Thanks,
Rima

Rima Ramchandani

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From: Peter Hamilton [mailto:PHamilton@stikeman.com]
Sent: September-06-17 2:25 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>
Cc: Glenn Zacher <GZacher@stikeman.com>; Myers, Jonathan <jmyers@torys.com>; Michael Boll <Michael.Boll@ieso.ca>; Anthony Martinello (Anthony.Martinello@ieso.ca) <Anthony.Martinello@ieso.ca>
Subject: RE: IESO letter of credit

I have been in touch with IESO and will revert when I have instructions from them.

In the meantime, can you let me know where your client stands on funding of interim period debt service and security for non-rated LDC obligations.

Peter Hamilton

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From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Wednesday, September 06, 2017 10:40 AM
To: Peter Hamilton; Feldman, Michael
Cc: Glenn Zacher; Myers, Jonathan; Michael Boll; Anthony Martinello (Anthony.Martinello@ieso.ca)
Subject: RE: IESO letter of credit

Hi Peter, just following up on this email exchange and the draft MTSA. We would like to further advance the draft over the next week and ideally reflect the IESO's additional input discussed with Michael below. Please let us know when you expect to have further feedback and drafting comments on the MTSA for us.

Many thanks,
Rima

Rima Ramchandani

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From: Peter Hamilton [mailto:PHamilton@stikeman.com]
Sent: August-23-17 3:39 PM
To: Feldman, Michael <mfeldman@torys.com>
Cc: Glenn Zacher <GZacher@stikeman.com>; Ramchandani, Rima <rramchandani@torys.com>; Myers, Jonathan <jmyers@torys.com>; Michael Boll <Michael.Boll@ieso.ca>; Anthony Martinello (Anthony.Martinello@ieso.ca) <Anthony.Martinello@ieso.ca>
Subject: RE: IESO letter of credit

A few comments and additions:

Peter,

Here is my summary of our discussion. Paragraph numbers below correspond to the paragraph numbers in your July 31 memo.

1. I indicated that the master trust indenture was still a work in process but that we would either send you our next draft of it or else send you the definitions schedule for now.

Our understanding is that all documents are to be settled and executed substantially contemporaneously, and that when drafts of the full document are further advanced we will receive and have the opportunity to comment upon the drafts.

2. Your concern on all of the issues referenced in this paragraph is that IESO should not be giving a rep and warranty as to the consequences of the application of the statute. I pointed out the benefit of setting out the intention of the parties as contemplated in section 27(2) of the Act. We agreed that we would recast these various conclusions from the Act as a statements of intention of the parties.

IESO and OPG to speak on the mechanics of the giving of notice, settlement and closing.
IESO/Glenn and OPG/Myers to speak on whether the financing entity needs to register as a program participant in Online IESO and execute a participation agreement

3. You said that the concern you had with the matter in paragraph 3 was primarily an opinion matter. You wanted to ensure that the survival of the reps and warranties could not affect the validity of the transfer. I said that we can arrange to clarify that by adding a provision somewhere that a misrepresentation would not affect the validity of any Transfer and that the sole remedy for a misrepresentation would be through the indemnity section. Then you agreed that you would not object to the indemnity section in 6.1(a) so long as we limited it to clause (i) (breach of covenants) and clause (ii) (breach of rep and warranty) but deleted clause (iii) (IESO's status and obligations as Servicer). I said we could consider that. You also thought that the carve outs in 6.1(a) were more appropriate for an underwriting agreement than a purchase and sale agreement. I indicated that if you had any suggested drafting changes we would be happy to entertain them.

I also stated that the willingness of IESO to indemnify for breach of reps, warranties and covenants was subject to settling the specific reps, warranties and covenants to which the indemnity applied. I stated that we did not have an in principle objection to being liable for beach of reps, warranties and covenants but that IESO was not prepared to enter into an indemnity which in substance allocated risk of other events between the parties. We will provide draft language.

4. I believe that your concern in paragraph 4 is more one of form than substance. You did not want third parties, like the Indenture Trustee, to have a right under the MTSA to impose obligations on IESO. You acknowledged that the benefits of the MTSA would be part of the security package granted to the Indenture Trustee but said that you would prefer having IESO give a separate acknowledgement to that effect to the Indenture Trustee rather than give the indenture trustee rights under the MTSA. Fine. We can make that work.

Agreed.

5. and 6. really go to the same issue, which is that we need an accurate description of what IESO will be doing and we should probably also have a description of what IESO will not be doing. I told you that I thought the ball should be in IESO's court to prepare a description of what they expected they would and would not be doing so that OPG could review it and determine if there were any gaps and how to deal with these gaps. I suggested that you and IESO should focus on two streams of activity: (i) the information required to enable the determination of the clean energy adjustment and top up amounts and how this information would be communicated by IESO to OPG and OEB and by the OEB to Electricity Vendors through IESO, and (ii) the flow of collections and related information on the CEA and top up amounts from the Electricity Vendors through IESO to the Financing Entity. You said that you would work with IESO to provide that itemized description and I said that we would base the drafting of the servicing duties on the final version of that description.

IESO will produce a detailed list of what it sees as its responsibilities ,and the standard of care, if any attached to those responsibilities.

The open-ended language in Section 3.2(b) and the reference to IESO to "imposing" collection policies on electricity vendors are to be deleted. The excluded duties will state that the IESO is not responsible for delinquencies, for pursuing claims (other than routine administrative follow ups) or commencing litigation. Section 3.10(b) should specify that the electricity vendors are agents for the financing trust and not the IESO.

7. You confirmed our understanding that the accountants had become comfortable that the proposal to have the finance charges covered by the global adjustment would work so long as the payments of these charges was mandated by statute or regulation and was not a contractual obligation of IESO. I asked you if you knew if the accountants had considered if the MTSA could refer to this regulatory duty but then provide for an agreement on the operational details (i.e., what account to pay to, what day of the month to make the payments, etc.). You said that he didn't know but would ask. If this causes a problem for the accountants then we might want to have these details addressed in the applicable regulation.

We will follow up with KPMG.

8. You raised a new issue. You had heard that the dealers expected that IESO would have to post letters of credit and you had concerns about IESO's ability to do that, at least under its current credit facility. You also were under the impression that the LCs were intended to be security for the performance by Electricity Vendors of their duties and IESO should not be responsible for those duties. I told you that there were two separate issues. The first related to the moratorium period during which IESO would have the obligation to pay carrying charges and add this to the GA. I indicated that since this was the only source of covering the carrying charges during this period and since IESO was not rated AAA, we expected that there would have to be some credit support. This did not trouble or surprise you. The second issue related to the fact that everyone seemed to be in agreement that collection of the CEA could not be made part of the Market Rules and so now parties were considering how to address the risk of insolvency of Electricity Vendors. It was contemplated that some kind of credit enhancement would be likely, which could be in the form of LCs, but I didn't think that anyone expected IESO to be responsible for providing that credit enhancement. I subsequently learned that all options for credit support were still on the table, including the possibility of credit support from IESO, but that the dealers were not necessarily looking for IESO to provide this credit support, so long as it came from somewhere.

I do not think that these issues were raised by us or by IESO. In fact, I have significant concerns with respect to any credit enhancement provided by IESO, from a practical perspective (the availability to IESO of credit facilities), from a business purpose and justification perspective and from a financial statement/recourse perspective. Nonetheless we will consider and take whatever is being proposed to the accountants, although some clarity around what is, and what is not, on the table would be helpful.

Michael K. Feldman

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