

Message

Sent: 2017-12-11 11:42:29 AM
To: Leslie Wong (leslie.wong@opg.com) [leslie.wong@opg.com]
Subject: FW: FH Plan? Participation Agreement

Hi Les,

I understand you are off site today, but it would be good if you had 5 minutes to discuss this agreement.

We need to have this agreement completed in order for the Fair Hydro Trust to register as a program participant in Online IESO. The agreement and approach we proposed is an approach which already differs from the IESO's standard approach. We proposed this to address the concern that was raised with having the Trust sign the participation agreement. We understood that concern and proposed an alternative that would only require the participation agreement become active if the Trust engages in an activity in the IESO-administered market.

The issue seems to come down to Torys not wanting to have the Trust become bound by the participation agreement if the Trust engages in an activity that would have required execution of the participation agreement in the first place. This seems very low risk since it is entirely within the Trust's control to not engage in those activities, and there is no reason for it to do so. The agreement is drafted so that the Trust would need to intentionally engage in this activity in order for the participation agreement to become active.

On the IESO side, this arrangement is important as it is an auditable control measure and as such is the basis for which we obtained the approval of our market entry team to this non-standard approach. It could take us a week or more to change this approach internally and there is no guarantee a change will be agreed to.

Torys proposal of the remedy being to terminate the program agreement is not practical because IESO and Trust will continue to need to use Online IESO to effect settlements for Fair Hydro.

I'm hopeful we can take the pragmatic approach here and move forward with the agreement as we have proposed.

I am generally around today if you would like to discuss. 416-969-6023.

Michael

From: Myers, Jonathan [<mailto:jmyers@torys.com>]
Sent: Monday, December 11, 2017 10:54 AM
To: Glenn Zacher
Cc: Myers, Jonathan; Ramchandani, Rima
Subject: RE: FH Plan? Participation Agreement

Glenn,

Having now seen the revised draft agreement, I can confirm that we are not agreeable to the standard form Participation Agreement applying as a consequence of breach under the Program Agreement and that, in our view, the appropriate consequence is that the Issuer loses access to the portal. Les Wong is expecting to hear from Michael Boll, but advises that he is in meetings out of the office today so they may not be able to connect until tomorrow.

Jonathan Myers

From: Glenn Zacher [<mailto:GZacher@stikeman.com>]
Sent: December-11-17 9:39 AM
To: Myers, Jonathan <jmyers@torys.com>
Cc: Ramchandani, Rima <rramchandani@torys.com>
Subject: RE: FH Plan? Participation Agreement

Jonathan – sorry about that, see attached

Glenn Zacher

Direct: +1 416 869 5688
Email: gzacher@stikeman.com

Stikeman Elliott

Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Myers, Jonathan [<mailto:jmyers@torys.com>]
Sent: Monday, December 11, 2017 9:35 AM
To: Glenn Zacher
Cc: Ramchandani, Rima; Myers, Jonathan
Subject: RE: FH Plan? Participation Agreement

Glenn - Please send the intended attachment. It was not included in your email this morning.

Though I will comment more fully once I see the revised draft, the work-around approach, as I discussed with you previously, contemplated using the side agreement in place of the standard form PA. We never agreed to the PA becoming triggered by anything under the side agreement for the very same reasons we determined not to use the PA in the first instance. Having the consequence of a breach under the side agreement be that the PA is triggered is inconsistent with the agreed-upon need for and use of the side agreement.

Jonathan Myers

From: Glenn Zacher [<mailto:GZacher@stikeman.com>]
Sent: December-11-17 8:15 AM
To: Myers, Jonathan <jmyers@torys.com>
Cc: Ramchandani, Rima <rramchandani@torys.com>
Subject: RE: FH Plan? Participation Agreement

Jonathan –

See our proposed edits.

We have reverted to the previous draft whereby the issuer would be bound by the PA if it “intentionally” participates in the IESO-administered markets. This was the compromise/work-around approach we had initially proposed and which we got internal IESO approval on. The IESO is not agreeable to OPG’s proposed change – Michael Boll I understand may call Les Wong about this later today. I would not think that this poses any real risks for OPG since the PA is only triggered if the issuer intentionally uses its access to Online IESO to participate in the market. Give me a call if you want to discuss further.

Regards,

Glenn Zacher

Direct: +1 416 869 5688
Email: gzacher@stikeman.com

Stikeman Elliott

Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Myers, Jonathan [<mailto:jmyers@torys.com>]
Sent: Thursday, December 07, 2017 9:06 PM
To: Glenn Zacher
Cc: Ramchandani, Rima; Myers, Jonathan
Subject: RE: FH Plan? Participation Agreement

Glenn,

Our proposed changes are provided in the attached clean and blackline docs.

Thanks.

Jonathan Myers

P. 416.865.7532 | F. 416.865.7380 | 1.800.505.8679

From: Glenn Zacher [<mailto:GZacher@stikeman.com>]
Sent: December-05-17 2:02 PM
To: Myers, Jonathan <jmyers@torys.com>
Cc: Ramchandani, Rima <rramchandani@torys.com>
Subject: RE: FH Plan? Participation Agreement

Hi Jonathan –

See proposed edits (clean and blackline version).

In answer to your questions:

- With regards to what information needs to be exchanged by IESO/Issuer via Online IESO under the MTSA - carrying cost will be submitted monthly for payment; the portal allows for a secured mechanism to submit costs that can be machine read and transferred to an invoice for payment.
- With regards to what confidential information Issuer would gain access to - it is a secured site and Issuer is only able to access its own confidential information, i.e., banking info, address, submitted data, etc.
- With regards to whether other Online IESO participants will have access to any confidential information of the Issuer – as a secured site, other participants will not be able to access confidential information of the Issuer.

Please get back to me ASAP with any suggested changes. I understand that this needs to be completed and the Trust registered in Online IESO promptly in order to be able to complete the scheduled transfers.

Regards,
Glenn

Glenn Zacher

Direct: +1 416 869 5688
Email: gzacher@stikeman.com

Stikeman Elliott

Follow us: [LinkedIn](#) / [Twitter](#) / [stikeman.com](#)

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Myers, Jonathan [<mailto:jmyers@torys.com>]
Sent: Monday, December 04, 2017 8:56 AM
To: Glenn Zacher
Cc: Myers, Jonathan; Ramchandani, Rima
Subject: RE: FH Plan? Participation Agreement

Glenn,

Apologies for the delay. My comments on behalf of OPG are attached (clean and blackline).

Thanks,

Jonathan Myers

P. 416.865.7532 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

TORYS
LLP

From: Glenn Zacher [<mailto:GZacher@stikeman.com>]
Sent: November-15-17 7:36 AM
To: Myers, Jonathan <jmyers@torys.com>
Subject: FH Plan? Participation Agreement

Jonathan –

Sorry for the delays. Let me know if this works or if have any comments.

Glenn

Glenn Zacher

Direct: +1 416 869 5688
Email: gzacher@stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.