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Memorandum

To: Tim O'Neill, Chair
Carole Workman, Audit Committee Chair
Peter Gregg, President and CEO

From: Michael Boll, Associate General Counsel

Date: December 5, 2017

Re: Ontario Fair Hydro Plan - Agreements

At the special IESO Board meeting on November 22, 2017, the IESO Board authorized and approved the IESO entering into and performing its obligations under the following agreements:

a) a Master Transfer and Servicing Agreement between the Corporation and Fair Hydro Trust;
b) a Security Agreement between the Corporation and Fair Hydro Trust; and
c) an Acknowledgement and Indemnity Agreement between the Corporation and BNY Trust Company of Canada, in its capacity as Indenture Trustee of Fair Hydro Trust.

The Board delegated authority to the Chief Executive Officer, Board Chair and Audit Committee Chair to approve any additions, deletions or changes to the form of the agreements that had been presented to the Board on November 22. Any such approved amendments are required to be reported to the Board promptly and no later than the Board's next regularly scheduled meeting.

The purpose of this memorandum is to summarize the changes that have been negotiated to the agreements following the November 22 Board meeting, and to seek your approval for such changes.

The terms of these agreements have been settled among OPG, dealers and IESO (subject to final approval) sufficient to enable the agreements to be sent to the rating agencies to complete the ratings process. There is a chance further changes will be made to these

IESO-N-0034106

agreements arising out of the ratings process but if so we will provide a similar memorandum explaining the changes. We don't expect further substantive changes affecting the IESO.

Master Transfer and Servicing Agreement

A blackline of the Master Transfer and Servicing Agreement is attached showing the changes to the version provided in the November 22 Board materials.

Most of the changes are non-material drafting or clarifying changes, or additions of references to the need to satisfy the Rating Agency Condition (i.e. notice to rating agency and rating agency does not reduce or withdraw the rating) before the financing entity agrees to any amendment or waiver.

The more substantive changes are described below, none of which are material:

- Section 3.3 – Implementation Plan: A new section has been added that requires the IESO and the financing entity to work to develop an implementation plan for actions to be taken to facilitate the OEB, the financing entity, the IESO and electricity vendors being prepared to perform their respective obligations under the Fair Hydro Act and regulations when the setting, invoicing and collection of clean energy adjustments commences. The IESO and financing entity will need to prepare three progress reports beginning June 30, 2020 leading up to the commencement of collection of the clean energy adjustment.

- Section 3.14 – IESO Regulatory Obligation to Pay the Financing Entity's Carrying Costs. The provision has been changed so that payments will be made in advance, rather than in arrears.

- Section 3.15 – IESO Security for CEA Remittances. Detail has been added to define Non-Investment Grade Rated Electricity Vendors and to provide for a calculation of the annual amount of the Letter of Credit required to be provided, which is capped at $100 million. We believe the amount will always be less than the cap.

- Section 6.1 – Liability of the IESO; Indemnities. Changes are to conform the indemnity to that provided by OPG in its Management Agreement. The changes benefit the IESO.

Acknowledgement and Indemnity Agreement

At the time of the November 22 Board meeting, we had been negotiating this agreement. The form of agreement provided to the Board reflected the IESO's position, which would have had the IESO indemnify the Indenture Trustee, but with no general indemnity provided directly to any of the investors or banks. Our position was that IESO's liability should not be greater under this agreement than under the Master Transfer and Servicing Agreement. Counsel for the dealers had taken the opposite position and was demanding a direct indemnity of all investors, banks and other specified creditors. OPG had agreed to the dealers' form of indemnity.

Following a week of negotiation with OPG and the dealers, the form of indemnity that has been settled by OPG, the dealers and IESO (subject to final approvals) is as follows:

- There will be no general indemnification by IESO or OPG in favour of Specified Creditors (i.e. investors who purchase the term bonds) as this would not be consistent with general market practice for term Asset Backed Security (ABS) deals in Canada.
- There will be a standalone indemnity from the IESO and OPG in favour of the Indenture Trustee on behalf of only Senior Warehouse Noteholders (i.e. banks holding short term notes). We are advised that this form of direct indemnity is not unusual for banks in this market.
- As in the draft indemnity provided to the Board for the November 22 meeting, the IESO would provide an indemnity for damages caused by IESO's breach of its obligations, representations or warranties under the Master Transfer and Servicing Agreement.

We believe providing this form of indemnity is low risk due to the IESO's limited obligations under the Master Transfer and Servicing Agreement. The IESO would need to breach one of its obligations under the Master Transfer and Servicing Agreement in a way that caused damage to a Senior Warehouse Noteholder for the indemnity to be triggered. By directly indemnifying the Senior Warehouse Noteholders, this may theoretically increase the IESO's liability beyond that under the Master Transfer and Servicing Agreement. However, as a practical matter, the potential for increased liability is only theoretical because the notes held by the banks do not trade (therefore there is low risk of trading losses). Other than trading losses, any other liability should be the same as what would exist under the Master Transfer and Servicing Agreement.

Secondly the amount of exposure is limited since the current warehouse facility is capped at $800 million.

The changes to the form of Acknowledgement and Indemnity are to reflect the foregoing, to repeat the list of limitations to the IESO's duties, liabilities and obligations from the MTSA, and to make conforming changes to align with the indemnity to be provided by OPG, many of which are for the benefit of the IESO.

A blackline of the Acknowledgement and Indemnity Agreement is attached showing changes to the form provided at the November 22 meeting.

<u>Security Agreement</u>

There have been no substantive changes to the security agreement presented to the Board on November 22. The majority of changes are to add reference to the Rating Agency Condition, similar to the Master Transfer and Servicing Agreement.

A blackline of the Security Agreement is attached showing changes to the form provided at the November 22 meeting.