

DRAFT SE OPINION

We have acted as counsel for The Independent System Operator (the "IESO") in connection with a Security Agreement dated [DATE] (the "Security Agreement") entered into between the IESO and ● (the "Trust"), and acknowledged and accepted by [the Indenture Trustee].

The opinions expressed herein relate only to the laws of the Province of Ontario (the "Province") and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

- (a) the genuineness of all signatures of all parties and the legal capacity of all individuals signing any documents;
- (b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic or electronically transmitted copies or facsimiles thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles;
- (c) that each of the parties, other than the IESO, to the Security Agreement has all requisite ~~corporate~~ power and capacity to execute and deliver the Security Agreement and to perform its obligations thereunder, and has taken all necessary ~~corporate~~ action to authorize the execution and delivery of the Security Agreement and the performance of its obligations thereunder;
- (d) that each of the parties, other than the IESO, to the Security Agreement has duly executed and delivered the Security Agreement;
- (e) that the Security Agreement is a legal, valid and binding obligation of each of the parties thereto, other than the IESO, enforceable against each such party by each other party thereto, in accordance with its terms; and

- (f) that all relevant statutes and regulations are constitutional, have been duly enacted and are in full force and effect and in the event of any conflict or inconsistency between the Ontario Fair Hydro Act (the "Act") and the regulations thereunder (the "Regulations") and any other legislation, guidelines or rules, such inconsistency will be resolved in favour of the Act and the Regulations.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

Opinions

Based on and subject to the foregoing and the assumptions and qualifications set out at the end of this opinion, we are of the opinion that:

1. The IESO is a corporation without share capital continued under Part II of the Electricity Act.
2. The IESO has the necessary corporate power and authority to execute and deliver the Security Agreement and to perform its obligations thereunder.
3. The execution and delivery of and performance by the IESO of the Security Agreement have been authorized by all necessary corporate action on the part of the IESO.
4. The Security Agreement ~~have~~has been duly executed and delivered on behalf of the IESO.
5. The Security Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms.
6. The execution and delivery by the IESO of the Security Agreement and the performance by the IESO of its obligations thereunder, are authorized by, the Act and the Regulations and do not and will not violate or result in a breach of any statute or regulation of the Province or of Canada that is applicable to the IESO.

7. The execution and delivery by the IESO of the Security Agreement and the performance of its obligations thereunder do not require the IESO to obtain any consent, authorization or approval of Her Majesty the Queen in right of Ontario, any governmental authority or regulatory body in the Province or any court or tribunal or other similar entity having jurisdiction under the laws of the Province or the federal laws of Canada applicable in the Province, or to make any filing or provide any notice to any such entity, other than such consents and approvals as have been obtained or filings or notices that have been made, in each case copies of which have been provided to you.
8. The Security Agreement creates a valid security interest in favour of the Trust in the personal property described in the Security Agreement as being subject to a security interest in which the IESO now has rights and is sufficient to create a valid security interest in favour of the Trust in any such personal property in which the IESO acquires rights after the date of this opinion when those rights are acquired by the IESO in each case to secure payment and performance of the obligations described in the Security Agreement as being secured by it.
9. Registration has been made in all public offices provided for under the laws of Ontario where such registration is necessary at this time to perfect the security interests created by the Security Agreement with respect to the personal property of the IESO and particulars of the registration are set forth in Schedule A hereto.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

- (a) enforceability of the rights and remedies provided in the Security Agreement may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent preference and conveyance, transfer at undervalue, assignment and preference and other similar laws of general application relating to or affecting creditors' rights;

(b) the availability of equitable remedies, including, without limitation, the remedies of specific performance and injunctive relief, may only be granted in the discretion of a court of competent jurisdiction;

~~(c) the enforceability of the Security Agreement may be limited by general principles of law and equity relating to the conduct of the Trust prior to execution of or in the administration or performance of the Security Agreement, including, without limitation, (i) undue influence, unconscionability, duress, misrepresentation and deceit, (ii) estoppel and waiver, (iii) laches, and (iv) reasonableness and good faith in the exercise of discretionary powers;~~

~~(d) the discretion that a court may reserve to itself to decline to hear an action if it is not the proper forum to hear the action or if concurrent proceedings are being brought elsewhere;~~

~~(e) indemnification provisions set out in the Security Agreement may be unenforceable to the extent that a court decides that any payment required thereunder would derogate from the court's discretion in respect of indemnified amounts, or would be inconsistent with the court's determination by whom and to what extent indemnified amounts shall be paid;~~

~~(f) a court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive;~~ (g) the awarding of costs of or incidental to proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge and the court or judge has the full power to determine by whom and to what extent such costs shall be paid;

~~(h)~~ (hd) the provisions contained in any of the Security Agreement which purport to sever any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such Security Agreement would be enforced only to the extent that a court determined that such prohibited or unenforceable provision could be severed without impairing the interpretation and application of the remainder of such Security Agreement;

(ie) the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another may be limited by law;

(j) enforcement of the Security Agreement may be limited to the extent that a court construes any provision of the Security Agreement to constitute a penalty or forfeiture;

(k) the records or a certificate, determination, notification or opinion of a party to the Security Agreement as to any matter provided for in the Security Agreement may be held by a court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;

(l) a court may give effect to waivers or amendments notwithstanding that they are not in writing and executed by the parties;

(m) the Personal Property Security Act (Ontario) ("PPSA") may affect the enforcement of certain rights and remedies under the Security Agreement to the extent that these rights and remedies are inconsistent with or contrary to such legislation;

(n) ~~no opinion is expressed regarding the nature or existence of, or the right, title or interest of the IESO or the Trust to, any regulatory asset, investment interest or other property, nor the ranking or priority of any interest of the IESO or the Trust therein;~~ in any property;

(o) we express no opinion as to the creation or perfection of a security interest in, nor have we effected any registrations or given any notices in respect of, any security interest in any property to which the PPSA does not apply pursuant to Section 4 of the PPSA;

(p) we express no opinion as to the creation of any security interest in:

(i) property consisting of a receivable (other than any receivable subject to Section 40(4) of the PPSA), licence, approval, privilege, franchise, permit, lease, security or agreement (collectively, "**Special Property**") to the extent that the terms of the Special Property or any applicable law prohibit the assignment, transfer or giving of a security interest, or require, as a condition of assignability, transfer or giving of a security interest, a consent, approval or other authorization or registration which has not been made or given; and

(ii) federal Crown debts to the extent the Financial Administration Act (Canada) has not been complied with.

(~~qm~~) a receiver, manager or receiver-manager appointed pursuant to the Security Agreement may, for certain purposes, be treated as agent for the Trust and not solely as agent for the IESO, notwithstanding any provision in the Security Agreement to the contrary;

(~~rn~~) we express no opinion as to the enforceability of any provision of the Security Agreement that is inconsistent with any provision of any other agreement between the IESO and the Trust except, where that inconsistency is addressed by a paramountcy clause, the paramountcy clause would be enforceable;¹

(~~so~~) a court might not allow the Trust to exercise rights to accelerate the performance of obligations or otherwise seek the enforcement of the Security Agreement based upon the occurrence of a default deemed immaterial;~~and~~

(~~tp~~) no opinion is expressed as to compliance with the Personal Information Protection and Electronic Documents Act (Canada) or any other privacy laws; and

(~~ug~~) the enforceability of the Security Agreement is subject to the limitations contained in the Limitations Act, 2002 (Ontario).

This opinion is given in connection with the transactions contemplated by the Security Agreement, for the benefit of the addressees, and is not to be relied upon for any other purposes or by any other party (except the successors and permitted assigns of the addressees), nor is it to be quoted from or made public in any way, without our prior written consent

Yours truly,

¹ A paramountcy clause will be added in the next turn of the Security Agreement.

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