

Message

From: WONG Leslie -LAWDIV [/O=OH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=217803]
Sent: 25/05/2017 7:16:15 PM
To: LEE John -TREASURY [john.s.lee@opg.com]
Subject: Fw: EXTERNAL - OPG Indemnity
Attachments: 20170525-OPG Indemnity draft 2 - ENERGY Comments.docx

Redacted - S/C Priv.

Sent from my BlackBerry 10 smartphone on the Bell network.

Original Message

From: Multani, Harkamal (ENERGY) <Harkamal.Multani@ontario.ca>
Sent: Thursday, May 25, 2017 5:53 PM
To: WONG Leslie -LAWDIV
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Hi Les,

Please find attached further comments on the OPG indemnity to reflect our discussion earlier today. As discussed, we are further considering the waiver provision, rep and warranties provision, and provision 2(c) (to the extent that the language ties back to the waiver provision to ensure consistency) and I will let you know where we land on this internally. John - Scott Nelms may also reach out directly to you on the waiver. However, with respect to the other edits, please review and let me know if you have any concerns.

Also, our Provincial Controllershship Office is asking for OPG's confirmation that the indemnity OPG is requesting won't impact the proposed accounting treatment for OPG's role in implementing the plan and that it is consistent with the accounting advice that OPG has received. Could you please confirm?

Many thanks,

Harkamal

Harkamal Multani
Counsel
Legal Services Branch
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-----Original Message-----

From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: May-24-17 2:50 PM
To: Multani, Harkamal (ENERGY)
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: Re: EXTERNAL - OPG Indemnity

Dear Harkamal

Unfortunately I travelling and not able to do a call this afternoon.

If Krista Hill and John Lee see available for a call this afternoon. I am happy for them to take the call and I can catch up with them afterwards.

Otherwise, I can tentatively do a call tomorrow late morning/early afternoon between my subsequent flights (I expect to be available between 11:30 am and 1 pm Eastern tomorrow, if that works).

I am generally available for a call on Friday.

Regards,

Les

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Multani, Harkamal (ENERGY)
Sent: Wednesday, May 24, 2017 8:28 AM
To: WONG Leslie -LAWDIV
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Thanks for this Les. Would you be available for a short call this afternoon. I wanted to discuss these changes further with you along with some of the other proposed changes. TBS (Ministry who will be providing the s.28 approval) has indicated that they will need a rationale for any deviations from their indemnity template (which is what the original indemnity I sent you was based on) and so I wanted to discuss the changes with you further to get a better sense of this. Thinking that a call would be the fastest way to address this.

Many thanks,

Harkamal

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From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: May-24-17 1:16 PM
To: Multani, Harkamal (ENERGY)
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Dear Harkamal,

Thank you for your e-mail. With respect to your questions/ comments below:

1) OPG has agreed to undertake the implementation of the Fair Hydro Plan at the request of the Province. As a result, OPG should be protected from all claims that arise as a result of activities carried out in furtherance of the Fair Hydro Plan. This would include any claims made by the Province itself (for example, if a future government does not like the Fair Hydro Plan and looks to make a claim against OPG.)

2) We do not think that the indemnity should limit coverage of subsidiaries to those that have been created for the Fair Hydro Plan. The key point is that a claim, to be covered, must arise from activities relating to the Fair Hydro Plan. There may be reasons for OPG to use an existing subsidiary, as opposed to a newly created subsidiary that is created for the Fair Hydro Plan, to carry out such activities. As long as the claim arises from activities relating to the Fair Hydro Plan (which the indemnity requires), the indemnity should not be limited to subsidiaries created for the Fair Hydro Plan.

Regards,

Les

From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, May 23, 2017 6:48 PM
To: WONG Leslie -LAWDIV

Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Hi Les,

I just had a few questions on some of the revisions you have proposed to the Indemnity Agreement:

1) With respect to the clause 6 you have inserted, we are wondering if you could provide some insight on why this clause has been inserted (i.e. why it is important to the OPG to include this clause and what risk the OPG is trying to mitigate in respect of its activities in relation to the Fair Hydro Plan)? Typically we do not include these types of waivers in our indemnity agreements and would prefer to remove this clause to be consistent with our indemnity template.

2) We are wondering if we can further define subsidiaries so that it is limited to subsidiaries that may be created specifically to carry out the activities in relation to the Fair Hydro Plan (My understanding is that the inclusion of "subsidiaries" is meant to cover a corporation that may be created to set up the financing entity and manage the securities offerings in relation to it).

We are considering your proposed edits with our clients internally and will likely have some further revisions, which we will get to you shortly. In the meantime, it would be helpful to get your insights on the above two questions in order to help us in our review.

I would be happy to set up a call to discuss if you would prefer as well. We are moving quite quickly on this file as we are looking to obtain s.28 approval by June 1, so a response at your earliest would be very much appreciated.

Many thanks,

Harkamal

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From: WONG Leslie -LAWDIV [mailto:leslie.wong@opg.com]
Sent: May-18-17 3:40 PM
To: Multani, Harkamal (ENERGY)
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Dear Harkamal,

Please find attached input from OPG and our external counsel, Torys, on the business case for the indemnity.

Also attached is a revised draft of the indemnity reflecting comments from OPG, Torys and Faskens (the independent counsel representing the special committee of OPG's board that was established to consider the Fair Hydro Plan).

Let us know if you have any questions or would like to discuss.

Regards,

Les

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From: WONG Leslie -LAWDIV

Sent: Tuesday, May 16, 2017 4:47 PM
To: 'Multani, Harkamal (ENERGY)'
Cc: LEE John -TREASURY; 'Hill, Krista'
Subject: RE: EXTERNAL - OPG Indemnity

Dear Harkamal,

Thank you for your e-mail. We will review the documents internally and with our external counsel, Torys, with a view to getting comments back to you on Thursday.

Regards,

Les

Leslie Wong
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From: Multani, Harkamal (ENERGY) [mailto:Harkamal.Multani@ontario.ca]
Sent: Tuesday, May 16, 2017 4:27 PM
To: WONG Leslie -LAWDIV
Subject: EXTERNAL - OPG Indemnity

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Hi Leslie,

I am counsel with the Ministry of Energy, Legal Services Branch. Carolyn Calwell, our legal director has asked me to reach out to you with respect to the Indemnity to be provided to OPG by the Province with respect to activities OPG would be undertaking under the proposed Ontario Fair Hydro Plan Act, if passed. I've attached for your review the Draft Indemnity Agreement we have prepared for OPG on this.

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 OPG 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 me 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 as well.

Many thanks,

Harkamal

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