Cabinet / LRC

May 10, 2017

Table of Contents

1. Ontario Fair Hydro Plan (Direct to Cabinet Legislation) – 12:30 to 2:00
    a. Cabinet Note
    b. Ministry Presentation
    c. Ministry Presentation Appendix
    d. Ministry LRC Submission
    e. Legislation and Compendium
    f. Variance Memo

Ontario

CABINET BRIEFING NOTE AND LRC RECOMMENDATION

Energy

Implementation of Ontario's Fair Hydro Plan

Cabinet (info)	TB/MBC	Cabinet	Announcement	TB/MBC	Cabinet	Introduction
Feb 15, 2017	March 1, 2017	March 1, 2017	March 2, 2017	May 9, 2017	May 10, 2017	May 11, 2017

Summary of Proposal

The proposed legislation contains a variance from Cabinet direction, which is detailed in the ministry's variance memo and within this note.

Context for Decision:

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which would lower bills by 25% for a typical residential consumer, starting in the summer of 2017. Up to 500,000 small businesses and farms would also benefit. These measures include the 8% rebate introduced in January 2017 and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills. OFHP includes some benefits for all consumer classes as well as targeted benefits to those with the greatest need, and includes the following major components:

- Refinancing the Global Adjustment (GA);
- Helping vulnerable electricity consumers;
- Extending the Industrial Conservation Initiative (ICI);
- Improving sector efficiency; and
- Modernizing Ontario's electricity market.

Since March 2, 2017, the Affordability Fund and ICI expansion have been implemented.

This proposal follows Cabinet direction to the Ministry of Energy to take the necessary steps to implement electricity price mitigation initiatives that support OFHP to provide additional rate relief to Ontario electricity ratepayers.

The proposed legislation, the *Fair Hydro Act, 2017*, if enacted, enables approaches to fairly allocate a portion of GA amongst specified current and future electricity rate payers ("Schedule 1- *Ontario Fair Hydro Plan Act, 2017*"), and help the most vulnerable Ontarians through enhancements to electricity support programs through government funding ("Schedule 2- Amendments to the *Ontario Energy Board Act, 1998*"). To fully implement the initiative, the ministry will be seeking future approvals for regulations identified in the proposed bill.

The proposed legislation:

1. Establishes a framework to refinance a portion of the GA costs in order to reduce costs for eligible electricity ratepayers ("specified consumers") in the near term while recovering these costs over the mid- to long-term:
   - July 1, 2017, to April 30, 2018, reduces, on average, after-tax electricity costs for prescribed typical consumers by 25% (inclusive of the 8% rebate and shifting of support program to be government funded).
   - May 1, 2018, to June 30, 2021, electricity rates will be prescribed by regulation. This regulation making authority would enable the government keep increases in line with the Consumer Price Index (CPI) (see page 17- Fiscal Pressure)
   - July 1, 2021, to April 30, 2047, electricity rates will increase at a pace that ensures recovery of the accumulated debt, interest costs and administrative costs (see page 14- Future Impacts to Electricity Rates). Time period may be extended by regulation.
   - Provides for amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*, to enable Ontario Power Generation (OPG), the Ontario Energy Board (OEB), and the Independent Electricity System Operator (IESO) to address payment, settlement and cost-recovery obligations and to manage the refinanced GA costs. (see page 19- OPG Mechanism).
2. Expands electricity support programs for the most vulnerable consumers and moves program costs from the rate base to the tax base. The bill amends the *Ontario Energy Board Act, 1998* to:
   - Move the recently expanded Ontario Electricity Support Program (OESP) to government funding, allow for the potential transition of the program administration to the Crown or other entity, and to enable information exchange between the Ontario Disability Support Program (ODSP) and Ontario Works (OW) to potentially allow for automatic enrolment procedures to be established;
   - Enable the funding of existing Rural or Remote Rate Protection (RRRP) for prescribed customers to be provided for through provincial revenues, rather than from electricity customers.
   - Enable a broader government funded Distribution Rate Protection (DRP) program (broadened RRRP) which provides additional distribution rate protection to residential customers of prescribed higher cost LDCs by enabling the regulations to prescribe a maximum distribution charge.
   - Enable the provision of a government funded on-reserve First Nations Delivery Credit (FNDC), which would cover 100% of the delivery charge for on-reserve First Nation residential customers.

Terms you need to know

- **Global Adjustment (GA)** – The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to

recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.

- **Local Distribution Companies (LDCs)** – Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.) LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive Ontario Energy Board approval to charge a distribution rate.
- **Delivery charge** – The costs of getting electricity from generating stations to homes and businesses. Appears as one line on electricity bills, includes three components:
  - Transmission: The costs of moving electricity across high voltage lines from generating stations to the distribution system. This cost is recovered through a variable per unit charge that is approved by the OEB.
  - Distribution: The costs of moving electricity from the transmission system to homes and businesses. Depending on the LDC, distribution costs makes up about 60% to 80% of the Delivery line. This cost is currently recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates for residential customers are moving to a fully-fixed charge by 2019 for most LDCs. Some LDCs, such as Hydro One and Algoma Power are transitioning over a longer period.
  - Line Loss: The costs to recover electricity that is lost when it is delivered over a power line.
- **Regulated Price Plan (RPP)** – Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Customer classification for Hydro One** – Customer service classes are determined by the kind of electricity service as well as by density – how many customers there are in the area and the number of customers per kilometre of line. Lower customer density increases the cost to serve. Residential class R1 customers are considered 'medium density' customers and residential class R2 are considered 'low density customers.' Hydro One also served urban residential customers, considered "high density" through its UR class. Hydro One also has urban and non-urban general service classes.
- **Ontario Power Generation (OPG)** – A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB)** – A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial

proceedings and formal stakeholder consultations.

- **Independent Electricity System Operator (IESO)** – An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.
- **Special Purpose Vehicle (SPV)** – **Special Purpose Vehicle (SPV)** – A Special Purpose Vehicle (SPV) sometimes referred to as a Special Purpose Entity (SPE) is an off-balance sheet legal entity created by the sponsor or originator. SPVs can be viewed as a method of isolating the risks of an underlying pool of exposures held by the sponsor and reallocating them to the SPV and often investors. This allows investors access to investment opportunities which would not otherwise exist, and provides a new source of revenue generation for the sponsor.
- **Security Interest** – A security interest is a type of property interest created by agreement or by operation of law over assets to secure the performance of an obligation, usually the payment of a debt. It gives the beneficiary of the security interest certain preferential rights in the disposition of secured assets.

Why does Ontario need these changes? Why now?

Addressing rising electricity prices is among the highest priorities for Ontarians. On March 2, 2017, the Ontario government announced OFHP, and since then, there has been increased media attention and public pressure for the government to bring forward the legislation which would enact the commitments made in the Plan. The government has committed to implement further rate relief measures by the summer 2017. On April 20, 2017, the OEB announced that, starting in May, electricity rates would be 17% lower than would have otherwise been without the 8% rebate (OREC), the anticipated move of OESP costs to government funding, and a portion of the reductions estimated under OFHP based on a comfort letter sent from the Minister of Energy.

What is the expected cost to government?

While the GA refinancing structure is intended to result in no fiscal impact to the province, the total projected cost to the electricity rate base is $24.7B amortized until 2047, or longer as may be prescribed. In 2017-18, the GA refinancing cost is forecast to be $2.5B which would eventually be recovered through the rate base. Enhancing electricity support programs and moving to government funding will cost government $499M in 2017-18.

TABLE 1: Cost Impact ($M)	2017-18	2018-19	2019-20	2020-21
Moving Social Programs to Government-Funded (details provided in the chart below)	499	753	829	892
GA Financing (Assumes funded from the electricity rate base)*	2,500	2,600	3,000	3,500
Cumulative Total	2,933	3,353	3,829	4,392

***Note:** GA Financing includes equity injection from the province to OPG. $1.1B investment operating asset in 2017-18 (Ministry has received appropriations)

The GA refinancing portion of the bill establishes a structure in which the IESO records the GA cost recovery deferral as a regulatory asset (regulated by the OEB). The IESO may then sell the regulatory asset, at which time it becomes an investment asset. The investment asset owner (OPG Trust/Special Purpose Vehicle (SPV) or "financing entities") may then further sell or securitize all or part of the investment asset to other parties in exchange for a funding obligation. Under this structure, OPG, acting as the "Financial Services Manager," would therefore take on the risk and responsibility of financing the deferral by purchasing monthly regulatory assets from IESO. OPG would finance these purchases through a combination of an equity investment by the Province flowed through the OFA ($1.1 B in 2017-18; see Table 1) and external private sector financing. The structure would increase gross debt of the Province (to finance the equity injection in OPG), increase net investment in OPG (so no net debt impact), increase interest on debt related to that external debt, and increase earnings of OPG to offset the increase in interest costs. The Province's net debt will remain unchanged as the equity investment in OPG will offset the additional Provincial borrowing. This is expected to be fiscally neutral to the Province.

The estimate for the combined impact of the support programs for the most vulnerable consumers would begin in 2017-18 and is expected to be $499M in 2017-18, growing to $753M in 2018-19 and rising. This investment has been factored into the 2017 Ontario Budget's fiscal plan. These estimates are based on variable inputs such as program uptake, future energy consumption of various consumer groups and future distribution rates, and are therefore subject to change.

TABLE 2: Fiscal Impact ($M) of Social Programs	2017-18 Budget
Rural or Remote Rate Protection	344
Ontario Electricity Support Program	140
On-Reserve First Nations Delivery Credit	15

Note: As approved in the TB/MBC submission of Mach 1, 2017, and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31, 2018. ENERGY will return updated out-year figures following program implementation

There is inherent risk in the financial estimates given the number of variables that are included in the calculations (e.g. cost of borrowing (projections assume 5%), electricity demand and electricity market conditions and accounting assumptions). Under the mechanism, the government would not have the ability to direct further changes to the rate of repayment for GA refinancing, which would limit the government's options to address electricity rate concerns in the future (see page 17- Fiscal Pressure).

What are the key steps to deliver this proposal?

- May 11, 2017 - Introduce legislation.
- Spring- Summer 2017- Energy to work with IESO, OEB, OPG, OFA and LDCs on the implementation of OFHP.

- Energy will post a proposal to the regulatory registry in early May outlining proposed new regulations and amendments needed to support implementation.
- Early June 2017 [TBD]- Energy to bring regulations to TB/MBC.
- Early June 2017 [TBD]- Energy to bring regulations to Cabinet/LRC.
- July 1, 2017- the remaining reductions and initiatives associated with the OFHP would take effect. Programs that are not established on this day for technical implementation issues will have benefits that are retroactively applied to customers once program is operational in individual LDCs.

How will the changes be communicated?

On March 2, 2017, the Premier announced OFHP, which would lower electricity bills by 25% for all residential customers including many small businesses and farms. Communications was sustained through minister announcements, local MPP echoes, a radio campaign, and a webpage that features all the programs and initiatives the government is taking to reduce electricity costs.

On May 11, 2017, there will be a news release to announce the introduction of legislation to implement OFHP. Phase two of the marketing campaign will start this summer and will include radio and television.

A robust issues management plan will be developed to mitigate the GA financing risks.

Notes and Recommendation from LRC

LRC item direct to Cabinet.

Cabinet Office Analysis

The proposed legislation allows for the implementation of the key elements of Ontario's Fair Hydro Plan (OFHP) announced on March 2, 2017, to provide further rate relief to Ontario electricity ratepayers. The Global Adjustment (GA) partial refinancing proposal will provide, on average, 25% in electricity rate relief (including the 8% announced in 2016 and shifting of support program costs to the tax base) to "specified consumers" (i.e., residential, farms, small businesses, condominiums, long-term care homes and co-operative housing as prescribed) between July 1, 2017, and April 31, 2018 ("The Fair Adjustment"). Electricity rates would then change by amounts prescribed in the regulations. Regulation making authority would enable the government to keep rate increases in line with Consumer Price Index (CPI) between May 1, 2018, and June 30, 2021 (see page 17- Legal Risks). Additional relief will be provided to Ontarians most in need through enhancements to electricity support programs through government funding.

1. Partial Refinancing of the Global Adjustment:

The proposed legislation establishes the framework to refinance a portion of the current GA costs to future ratepayers by recognizing the longer term benefit many of these

generating assets to the electricity system. The methodology is based on the assumption that some assets are expected to continue to provide benefit to future ratepayers beyond the term of current contracts (typically 20 years), and that future ratepayers are expected to continue to be able to utilize and benefit from these assets in the future. Similarly, conservation costs are currently recovered through the GA in the year they occurred while conservation initiatives can provide benefits to the system over many years.

The proposed *Fair Hydro Act, 2017* attempts to balance several key factors including financeability, accounting treatment and legal considerations by:

- Supporting financeability through a number of features, including a provincial undertaking not to interfere with clean energy adjustments once determined, which will be backstopped by a guarantee, and provisions intended to reduce borrowing costs and attract a wide investor base;
- Addressing the necessary accounting requirements through mechanisms to record funding, interest and the transfer of regulatory assets to avoid a fiscal impact to the province; and
- Mitigating legal risk by developing a methodology that attempts to ensure an alignment of costs with benefits to future rate payers.

In order for the clean energy adjustment to be characterized as a regulatory charge, the amount that could be refinanced would need to reflect the true value of the underlying assets being amortized over a longer period of time. According to a legal opinion by former Supreme Court Justice Binnie, there is a moderately high risk that the proposed change would be characterized as an unconstitutional tax rather than a valid regulatory charge because future consumers are being required to subsidize current consumers (see page 16- Legal Risk).

The bill establishes a structure in which the Independent Electricity System Operator (IESO) records the GA cost recovery deferral as a "regulatory asset" (regulated by the Ontario Energy Board (OEB)), supported at its foundation by the fact that the refinancing of the GA is not a reduction in the GA, but rather a deferral to be collected at a future time from "specified consumers" ("the Fair Adjustment" and "IESO deferral"). Specified consumers would receive a reduction in electricity rates from July 1, 2017 to June 30, 2018 as based on a 25% reduction for a prescribed typical residential consumer. IESO may then sell the regulatory asset, at which time it becomes an "investment asset." The investment asset owner (OPG Trust/Special Purpose Vehicle (SPV) or "financing entities") may then further sell or securitize all or part of the regulatory asset to other parties in exchange for a funding obligation.

The Minister, following the principles in the bill, would regularly calculate the "Fair Allocation Amount" to ensure a proper match of the allocation of the intergenerational costs and benefits in relation to each on the next 60 six month "reference periods." The financings will be backed primarily by the clean energy adjustments payable by specified consumers. The clean energy adjustments will track the actual payment obligations incurred by the financing entities when they become due and payable.

OPG, in its role as the Financial Services Manager, will calculate the aggregate clean energy adjustment payable in each month of the reference period, and, to ensure intergenerational fairness, these amounts will be managed to align with the fair allocation amounts determined by the Minister. OEB would calculate the rates at which the clean energy adjustment could be collected from specified consumers. To recoup the costs associated with the fair adjustment, consumers would be invoiced the clean energy adjustment on their electricity bills through existing IESO and Local Distribution Companies' (LDC) processes, which will be channeled through to pay each financing entity's related funding obligations. However, electricity rates are projected to remain lower than would have otherwise been until about 2026-27 (pending the development of the fair allocation amount), and the clean energy benefit will appear on customer's bills once repayment of the accumulated debt begins.

OPG is planning to create a SPV or Trust to finance the partial GA refinancing. To maintain the integrity of the structure, OPG must have the ability to appoint and remove the Trustee (or Board of Trustees) of the SPV/Trust, with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV/Trust. The SPV/Trust will be consolidated by OPG, giving OPG the appropriate powers to impact its exposure to variability of the income in the SPV/Trust. OPG will have the ability to direct the financing of the SPV/Trust and both benefit from its financing strategy and be at risk as a result of it.

Once the OPG Trust/SPV has purchased the regulatory asset, which it is under no obligation to do, it will ultimately take on the risk and responsibility of financing the deferral through debt financed from OPG and external sources. OPG's debt would be funded through a combination of an equity investment by the Province through the OFA (see page 4: Table 1) and external financing through sale or securitization of the investment asset. The structure would result in increased gross debt of the Province (to finance the equity injection in OPG), increased interest on debt related to that Provincial debt, increased net investment in OPG (to offset the Provincial borrowing for no net debt impact), and increased earnings of OPG (to offset the interest on debt).

The legislation also provides that no action or omission by the OEB, the Minister, or the Crown is effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay the clean energy adjustment. Additionally, to support the program, the government will be expected to provide certain performance guarantees, indemnities and bond-purchase covenants. The legislation enables these agreements. The terms of these obligations will be worked out over time in connection with the marketing of financings through OPG. The goal will be to achieve the highest rated securities, although that will depend on issues such as the strength of the undertaking not to adversely affect the program through subsequent legislation.

The potential cost to government associated with providing this type of guarantee and the cost of borrowing from private lenders is unknown at this time. It should be noted that the external borrowing by the OPG Trust will be at a higher interest cost than Provincial borrowing costs, which would affect the carrying costs that would need to be recovered from ratepayers in the future (see page 14- Risks and Considerations).

Key elements of this schedule of the bill include:

Specified Consumers

- The defined group of consumers to whom the "Fair Adjustment" applies. Prescribed consumers include residential consumers, farms, small businesses, condominiums, long-term care homes and co-operative housing. These are primarily consumers eligible for the RPP, and aligns with the eligibility under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA).

Clean Energy Costs

- Clean energy costs are those costs that arise from the "clean energy initiative" and are allocated to the specified consumers for past, present and expected costs.
- The clean energy costs include estimated amounts to be paid by IESO in adjustments made under section 25.33 of the *Electricity Act*, *1998* (basically, the GA) which relate to contracts for:
    - Renewable energy generation or capacity, conservation and demand management, energy storage, and energy efficiency;
    - Natural gas generation and capacity (excluding certain contracts under section 78.2 of the *Ontario Energy Board Act, 1998* or as prescribed);
    - Payments made under section 78.5 of the *Ontario Energy Board Act, 1998*; and,
    - Other costs as may be prescribed.

Fair Adjustment

- The adjustment to rates to ensure intergenerational fairness.
- July 1, 2017- April 30, 2018- reduction in rates for "specified consumers" based on a 25% reduction for a prescribed typical consumer.
- May 1, 2018- June 30, 2021- the bill allows for rates to be set by regulation (see page 17- Fiscal Pressure).

Fair Allocation Amount

- Principles established in the bill require proper alignment over time between the costs of providing facilities for clean electricity generation and conservation ("clean energy costs") and the consumers who benefit from these investments.
- The Minister of Energy sets the fair allocation amount, and is required to:
    - Fairly measure and allocate the estimated clean energy costs (and the clean energy benefits) among the "specified consumers" for applicable "reference periods" (typically every 6 months); and,
    - Take into account (in the fair allocation) funding obligations (financing) that have been incurred (see page 16- Legal Risk; page 17- Fiscal Pressure);

  - Align these costs with clean energy benefits expected to be received by rate payers in the future.

- Subsequent calculations may be undertaken by other agents as prescribed.

Clean Energy Adjustment

- Determined by Financial Services Manager (OPG), the clean energy adjustment is the amount that will be recovered from consumers in the future to pay principal, interest, transaction costs and administrative costs associated with the fair adjustment and consistent with the fair allocation amount.
- Will be subject to true-up process that will reconcile actual amounts collected with expected amounts.
- July 1, 2017- June 30, 2021- OPG to internally capitalize the costs related to the fair adjustment, which will result in increased financing costs during this time.
- July 1, 2021- April 30, 2047- to be invoiced to consumers and collected as part of the electricity bills through existing IESO and LDC processes. Note: it is not certain when the clean energy adjustment will ultimately appear on electricity bills as this will be tied to when repayment of the accumulated debt begins.
- In accordance with the regulations, the OEB to calculate the rate at which specified consumers are invoiced to recover the clean energy adjustment.

Regulatory Asset and Investment Asset

- A regulatory asset is created as IESO defers its right collect a portion of the rates that it would have otherwise received from customers/LDCs if not for the implementation of the Fair Adjustment.
- Subject to OEB approval, IESO records the funding shortfall as a regulatory asset, as IESO would also have collection rights to recover the funding shortfall, which may be sold. Collection rights are deferred until July 1, 2021.
- The Financing Plan contemplates the Financial Services Manager (OPG) establishing financing entities (OPG Trust/SPV) to buy the regulatory asset and the associated rights in exchange for a payment to the IESO. IESO would use the payment to offset the funding shortfall.
- This purchase and sale turns the regulatory asset into an investment asset for the investment asset owner. The transfer includes the rights to collect amounts related to the clean energy adjustment in a manner consistent with the bill.
- The investment interest owner may further sell all or a portion of its rights and interests. An investment interest owner may also grant a security interest over all or a portion of its right, title and interests to secure a funding obligation.
- After 4 years (July 1, 2021) the IESO has the right to collect its funding shortfall from ratepayers in the event that a portion of the regulatory asset is not bought and sold. If the regulatory asset is not sold, the IESO would require an alternative source of financing. IESO has requested a credit facility from the Ontario Financing Authority (OFA) (see page 17- Fiscal Pressure).

- The rights associated with the investment asset require IESO and LDCs to collect money from rate payers as agent of the investment asset owner.

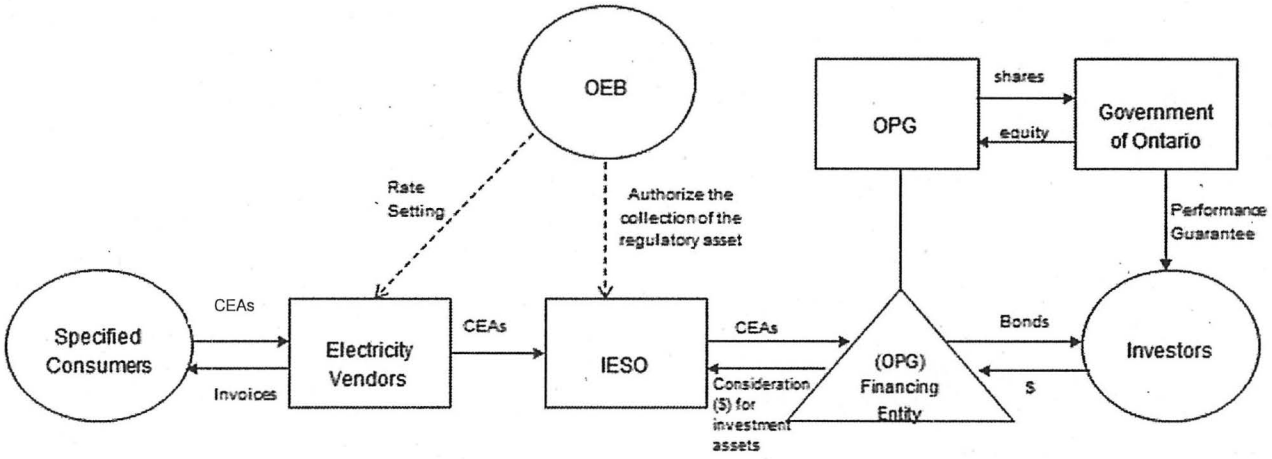
Financing Plan

- In practical terms, the Financing Plan is intended to show how debt (with varying incurrence dates, maturities and interest rates) will be used over time.
- Prepared by the Financial Services Manager (OPG), the Financing Plan is intended to set out when a "funding obligation" (financing) should be incurred so that the (OPG) financing entity can raise money to acquire the "investment interest" from IESO. Plan to be provided to the Minister of Energy.

Crown Undertaking (Guarantee or Backstop)

- The bill provides that no action or omission of the Crown, OEB, or the Minister would be effective to reduce, impair, or postpone or terminate the obligations of specified consumers to pay the clean energy adjustment.
- The Ministers of Energy and Finance together, with LGIC approval, may enter into agreements for compensation with any person in respect of the bill, including regarding the performance of the IESO or electricity vendors under the bill.
- The Ministers of Energy and Finance together, with LGIC approval, may agree to guarantee and indemnify any debts, obligations, securities or undertakings associated with the investment interest.

Figure 1: Financing Structure



Note: CEAs are "clean energy adjustments".

External Opinions

The proposed structure's impacts on IESO has been extensively reviewed by KPMG (IESO auditor), and the firm has provided a final draft accounting opinion confirming the validity of the structure under Public Sector Accounting Board (PSAB) standards, which will be updated after the legislation, regulations, and commercial arrangements are complete. KPMG advises that the variance account created by the proposed legislation meets the accounting criteria for the recognition of a "regulatory asset". The KPMG

opinion is highly technical and contains information pertaining to the proposed legislation. While it would be possible to make the opinion public, the ministry is not recommending this approach and is considering alternative options to propose.

If the government intends to keep rate increases to the pace of CPI from May 2018 to July 2021, this may require recourse to the fiscal plan to maintain the constitutionality of the GA refinancing structure.

For clarity, the below requirements were to be met to ensure the structure was defensible, and, based on the opinions received, the ministry is confident that the bill achieves these objectives:

- IESO requirements:
    - IESO can recognize a regulatory asset for the shortfall between the amounts collected from the LDCs and the amounts paid to the PGs using GAAP hierarchy to support regulatory asset under PSAB; IESO can derecognize regulatory asset upon sale to OPG; "Market books" are reflected on corporate books; and, OEB to act as regulator.
- OPG requirements:
    - OPG Trust/SPV purchases regulatory asset from IESO – classifies as intangible asset; OPG consolidates Trust/SPV; and, OPG retains GBE status.

The ministry retained Blakes to provide external legal advice in the development of the legislation. The Blakes team provided securitization, constitutional law, energy sector and government expertise. This team was integral to balancing the accounting, legal and finaceability imperatives, as well as differing interests among OPG, IESO, OEB and investment dealers, in crafting the legislation. Blakes will continue to advise through the development of regulations and the commercial agreements that will ensue.

However, despite the fact that the structure has satisfied the fiscal, and accounting requirements and mitigated to the extent possible the legal risks outlined in the policy submission, there remain some fundamental risks:

- The structure is unique in Canada and possibly the world, which increases the risk or unknown factors impacting its performance. The use of securities mechanisms to address debt is more common in the Unites States, but officials are currently unaware of any example that would compare to the size, complexity or fluidity of the proposal;
- Complexity of the structure and length of deferral/recovery increases risk and decreases transparency;
- Government would have no ability to control electricity prices resulting from these changes outside of recourse to the fiscal plan;
- Government would not know the price of private borrowing that would be required for the OPG Trust to work and will have limited control over OPG's direct operations as the Financial Services Manager; and,
- Private lenders and rating agencies may disagree with the assessment of the size of the Fair Allocation Amount which would increase the risk of the asset and

therefore its saleability. This could in turn, decrease the amount of rate reduction achievable under this mechanism.

2. Enhancing Electricity Supports and Shifting Costs to Government Funding:

Moving the Ontario Electricity Support Program (OESP) to Government Funding

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills. The program was launched in January 2016 and has had roughly 30% enrolment. Under OFHP the program was recently expanded to increase the existing benefit credit amounts by 50% and provide additional credits to more households. Under the expanded program the basic OESP benefit scale increased from $30-$50 to $35-$75 a month and the enhanced OESP benefit scale would increase from $45-$75 to $52-$113 a month for eligible consumers.

The proposed bill amends the *Ontario Energy Board Act, 1998* to allow for the program to transition from the rate base to the government funding, and allow for the potential transition of the program administration to the Crown or other entity. The cost to the fiscal plan would be $186 million in 2017-18. The bill provides further amendments designed to allow information sharing between the Ontario Works (OW) and the Ontario Disability Support Program (ODSP) and the entity responsible for OESP. The intention is that this information sharing will allow for the automatic enrolment of individuals that are already enrolled under the ODSP or OW, but it is currently unknown to what extent this will significantly impact new enrolment under the program. The ministry is continuing to work with MCSS to increase the uptake of the program and automate enrolment of current social assistance clients. The ministry and OEB are also working with the Canada Revenue Agency (CRA) to eliminate the CRA requirement for "wet signatures" on OESP application forms to streamline the application process.

Enhancing RRRP (Delivery Charge Relief) and Moving to Government Funding

Rural or Remote Rate Protection (RRRP) helps to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province. Currently, RRRP is a $290M program paid for by the ratepayers. For an average residential customer, the cost of supporting RRRP is roughly $1.58 per month. For other customers, the cost to support the RRRP can range from $65 for a greenhouse to $8,000 for a medium industrial.

The proposed bill amends the *Ontario Energy Board Act, 1998* to enable the funding of existing RRRP for prescribed customers to be provided for through provincial revenues, rather than from electricity customers. The intention is to draft regulations permitted under this section to move the portion of RRRP costs used to support Hydro One R2 customers from rate payers to government funding. This is the majority of the cost associated with RRRP.

The bill would further amend the *Ontario Energy Board Act, 1998* to enable the creation of a government funded distribution rate protection program and the ability to prescribe a maximum distribution charge for prescribed classes of residential customers for certain prescribed high cost distributors. The intention is to draft regulations permitted under this section of the bill to prescribe residential customers of the following LDCs to receive distribution rate protection: Hydro One R1 and R2 rate classes, Algoma Power (excluding reclassified residential customers), Atikokan Hydro, Sioux Lookout Hydro, Lakeland Power – Parry Sound, InnPower, Chapleau PUC, and Northern Ontario Wires.

The OEB would continue its usual rate setting activities for prescribed LDCs, as authorized under the *Ontario Energy Board Act, 1998*, and prescribed LDCs would continue to collect the revenue they are entitled. However, prescribed customers (~800,000 customers) of prescribed LDCs would pay no more than the maximum charge determined by the OEB. The shortfall between the set maximum charge collected from customers and the approved OEB charge would be made up of out provincial funds.

Targeted broadened RRRP consumers would see additional savings on their monthly bill that would vary based on their consumption level. Cost to fiscal plan would be $344 million in 2017/18. If the legislation and required regulations are passed, the program would become active as of a prescribed effective date (planned: July 1, 2017).

On-Reserve First Nations Delivery Credit

First Nation and Political-Territorial Organization leaders have advocated for the need for electricity rate relief for on-reserve customers and the review of delivery charges associated with transmission and distribution within the context of historical grievances related to lands affected by energy developments.

The proposed bill amends the *Ontario Energy Board Act, 1998* to enable the creation of a government funded delivery credit program for on-reserve customers with the details to be prescribed in the regulations. The intention is to enact regulations that would eliminate the delivery charge for all on-reserve First Nation residential customers served by licenced electricity distributors, and eliminate the monthly service charge for customers of licensed distributors that charge a bundled rate.

Eligible recipients would be automatically enrolled in the program. The OEB estimates that, on average, customers would receive a monthly benefit of $85. The program will cost approximately $15M annually and be implemented by the prescribed effective date (planned: July 1, 2017).

RISKS AND CONSIDERATIONS

Future Impacts to Electricity Rates

The impact of proposed legislation to a typical eligible customer's bill in July 2017 is a 25% decrease (combined with the 8% rebate effective January 1, 2017, and shifting of the funding of OESP and RRRP to provincial revenues), followed by an increase in

price over time. Between May 2018 and June 2021 electricity rates will be set in accordance with a methodology established by regulation which would enable rate increases to be kept in line with CPI (see page 17 – Legal Risk). Customers that are eligible for the RRRP enhancement, OESP, and the On-reserve First Nations Delivery Credit will see further reductions in their electricity rates by as much as 40-50%.

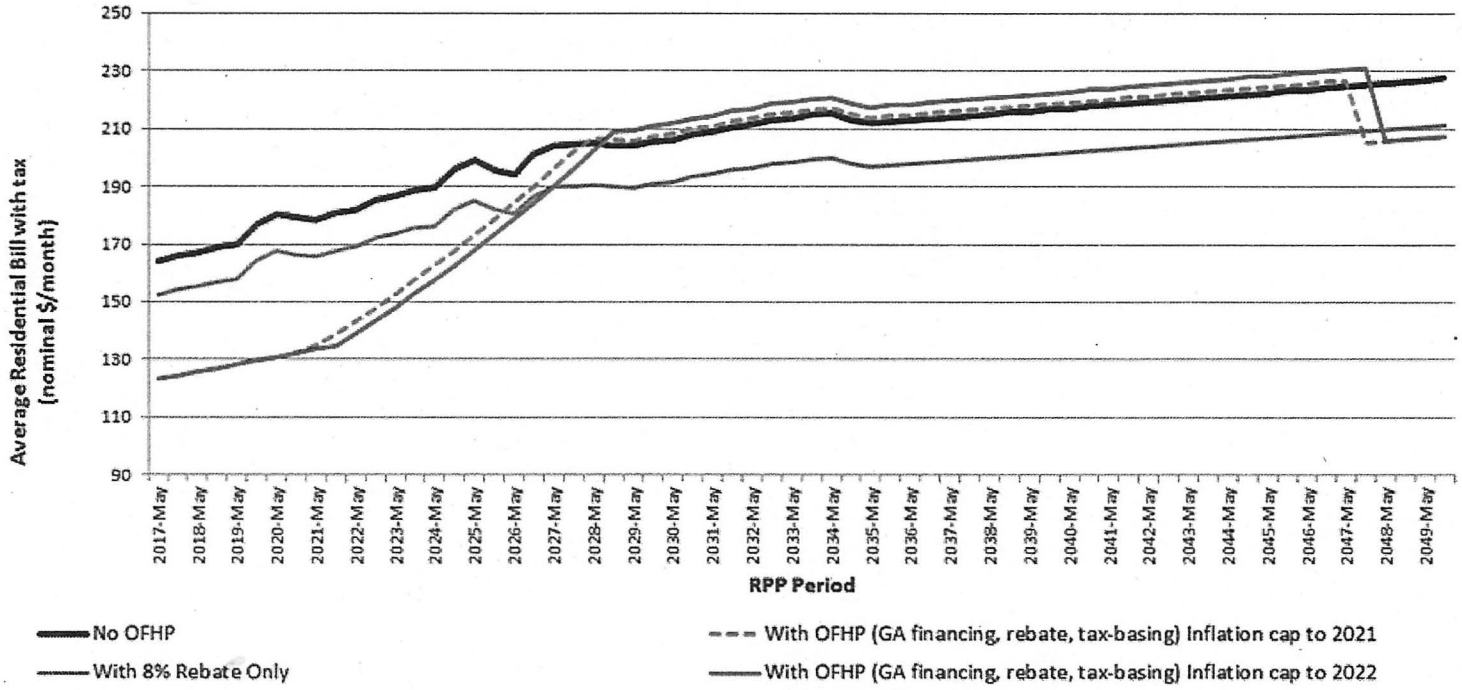
Original policy direction was to keep electricity rate increases in line with CPI until the end of 2021. While the government will have regulatory authority under the bill to establish rates after April 30, 2018, bills are expecting to begin to increase above the rate of inflation as of July 1, 2021 under current forecasts. This constitutes a variance from Cabinet direction. However, the government has publicly committed to 4 years of increases tied to the rate of inflation, which this plan addresses.

Borrowing money to refinance a portion of the GA costs for ratepayers lowers costs in the short term but results in substantial debt and higher electricity prices in the future. Under the plan, electricity prices have been projected to exceed forecast residential monthly bills by about 10% each year from what otherwise would have been from 2028 to 2047 (Note: Values are subject to change). Cabinet policy direction provided that electricity rates increases due to repayments should be capped at around 10% of the total electricity bill during the repayment phase of the plan. To maintain the integrity of the structure, the legislation does not provide a mechanism by which this level of bill increase can be ensured and therefore constitutes a variance from Cabinet direction. However, the debt rating will be impaired if the modelling suggests that rates could increase more than 10%, providing a cap in practical terms. The public may expect that the government is committed to reducing or holding constant the absolute cost of in the longer term and the government would not have the ability to control this portion of rates in the future.

Declining demand levels due to conservation, technology adoption, and self-generation would increase the costs borne by remaining customers to decease the debt associated with GA refinancing. IESO forecasted demand has historically been over-projected which also increases the risk of the static demand assumption. However, the reverse is also true, that if higher levels of electrification are achieved and demand increases, the cost of paying off the debt will be spread over a greater number of consumers. To partly mitigate against the risk that increased self-generation poses, the bill also provides that the clean energy adjustments may not be "set-off." In other words, it would exist as a separate and distinct component of the bill that could not be reduced by methods such as net-metering.

The current model is based on a static interest rate of 5%. While this assumption is accurate within the current historically low interest rate environment, should interest rates increase above 5%, residential bills would also significantly increase during the repayment phase of the plan. All of these factors increase the risk that the province would have to absorb some of the debt in the future.

Figure 2: GA Smoothing for RPP-Eligible Only



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

Not all generating assets will continue operations at the end of their contract. If the fair allocation amount is not properly designed, future rate payers will be paying the cost for assets that are no longer in use, which would be unconstitutional, unless legislatively authorised as a tax (see page 16- Legal Risk). High capital costs, equipment obsolescence or surplus capacity / low demand conditions mean that some generators may shut down at the end of their contract. Future ratepayers would be paying for these assets that no longer produce power in paying down the refinanced GA and accumulated interest costs, and it would need to be justified that these assets are still providing some kind of benefit to the system after they cease operation.

Bill Presentment

Over the fall/winter of 2017, the Ministry will be working with LDCs to undertake a comprehensive review of electricity bill presentment regulations.

The ministry expects to prescribe LDCs:

- To include certain basic messaging on electricity bills;
- Starting July 1, 2017, for those eligible, include the On-reserve First Nations Delivery Credit as a line item; and
- Prescribe LDCs to include bill inserts over the next year with OFHP messaging.

With respect to the OFHP, while the 8% rebate is expected to continue to appear on eligible consumer's bills, the further reductions as part of the GA refinancing and moving social programs to government funding will not appear as a specific line item. It is uncertain when customers will begin to be invoiced the clean energy adjustment as a distinct item on their electricity bill. This will commence once repayment of the accumulated debt begins.

Accounting, Provincial Credit Rating and Borrowing

The significant amount of additional provincial borrowing needed to refinance the GA and associated risks and fiscal costs (interest rates, repayment timelines) could put pressure on the Province's credit rating and overall borrowing capacity.

The complexity of the structure and length of deferral (i.e., recovery of debt) increase the overall risk of the proposal and decrease transparency to the public. The structure of the GA refinancing was designed to result in an (1) increase in provincial borrowing (2) no increase in net debt, and (3) no impact on annual surplus/deficit. However, depending on funding to OPG from the Province, an increase in interest on debt and an increase on income from OPG will result. The structure is also contingent on the size of the partial GA refinancing that is seen as possible, which, as mentioned, increases the likelihood of pressures on the fiscal plan in the near future (see page 17- Fiscal Pressure).

In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt.

- The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
- The ministry has received an appropriation for $1.1 billion operating asset to support these injections for the fiscal year 2017/18, and will report back through PRRT for future funding. Based on the final fair allocation amount calculation, the equity injections would be required until the period of recovery begins.
- The injections will be fiscally neutral for the province as they will be offset with the value of shares purchased from OPG.
- To further support the operations and mechanics of the OPG SPV/Trust, additional work will be done through the regulations and supporting agreements /documents. E&Y concurs with OPG's assessment that accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.

Rating agencies and investors in the Province's debt may view all of the borrowing (whether by the Province directly or the OPG Trust/SPV) as an obligation of the Province. Depending on the magnitude of the debt, the Province's borrowing cost may be impacted. The structure of the guarantees from the Province that will be required by the market at the transaction stage may also impact the accounting analysis. These will be negotiated at a later stage.

OPG will seek to achieve the highest possible credit rating (AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV/Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide.

The Ontario Auditor General (OAG) has been briefed on the proposal and has had access to the March 1, 2017, policy submission for Ontario's Fair Hydro Plan. While the auditors of OPG and IESO have provided assessments and the Office of the Provincial Controller Division (OPCD) has been engaged, the OAG has historically raised concern with "rate regulated accounting" and may take this into account when the provincial books are audited (i.e., it may impact whether the OAG qualifies the provincial books).

Based on early assessments, only a maximum of 18% rate relief can be justified by amortizing contracts over the useful life of the underlying assets. Reducing electricity rates up to or beyond this amount by this method could undermine the nature of the regulatory charge and could only be achieved by relying on increased borrowing.

Legal Risk

The current GA amount paid by consumers is a regulatory charge. One of the requirements of a valid regulatory charge (as opposed to a tax) is that the person paying the charge either benefits from the regulatory scheme or causes the need for regulation. In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional

tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

Former Supreme Court Justice Binnie has provided legal analysis of this proposal, stating that the amount that could be constitutionally financed as a regulatory charge as opposed to a tax would need to reflect the true value of the underlying assets being amortized over a longer period of time. Shifting too much of the current GA costs to future generations would jeopardize the nature of this being a regulatory charge.

A proposal for refinancing the GA that appears to cross-subsidize near-term consumers at the expense of long-term consumers by back-loading costs more than if costs were spread equally over the estimated lifespan of generation and conservation assets presents a moderately high risk (more likely than not) of constituting a tax. If the government fails to establish that the relevant electricity generating assets and conservation investments will continue to perform economically over the 30 year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge and would be characterized as a tax. If characterized as a tax, in the event of a challenge, it would be struck down by a court as unconstitutional and consumers would be entitled to recover their payments. This risk could be eliminated, either up front or retroactively, by the imposition of a valid tax.

The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and conservation and the group of consumers who benefit year to year from those facilities and investments. By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers. In short, the bigger the reduction in charges to current consumers, the greater the constitutional risk.

Mr. Binnie concluded that the proposed charge faces a moderately high risk of being characterized as an unauthorized tax rather than as valid regulatory charge because (1) there is a disproportionate back-end loading of the charge on 2021-2047 consumers for the benefit of 2017-2021 consumers and (2) because an unknown number of generating assets whose financing costs will be partly recovered from 2021-2047 consumers will not benefit them as they will no longer be in operation.

In addition, the structure of the GA refinancing means that the infrastructure included as part of the clean energy adjustment (i.e. amortized over 30 instead of 20 years) will need to be in service over the entire 30 year amortization period or provide benefits to the system in some way over the whole period. In practice this may mean that the government will have limited ability to alter the generation mixture included under the clean energy adjustments, including natural gas generation facilities, which may at some point be seen as inconsistent with the province's commitments to reduce greenhouse gasses.

The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs

with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

The bill also provides for provincial assurances, guarantees and a statutory cause of action. The provincial assurance provision is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction. The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

The guarantee provisions are intended to backstop the provincial assurance provision and provide that:

- the Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
- the Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

Fiscal Pressure

This proposal aligns with the 2017 Budget's fiscal plan, but involves significant ongoing risks. Parts of the proposal do not include a scheduled review period or an end date, resulting in an ongoing fiscal pressure, which may increase in the out years, and could only be removed by a legislative amendment.

The cost projections are highly sensitive to interest rates and other assumptions:

- The proposal assumes GA refinancing does not have a fiscal impact because the associated legal authority and accounting treatment requirements are met. If the costs of GA refinancing were accounted for as an expense to the fiscal plan, the fiscal impact would be significant ($2.5B in 2017-18, escalating annually).
- The term and timing of the GA refinancing are highly dependent on the IESO's forecast of GA costs and actual interest rates.

The extent of fiscal pressures is also dependent on other factors (i.e., OAG could qualify Ontario's books or issue an adverse opinion). Due to the complexity and size of the proposal, the government has commissioned external opinions on the fiscal and accounting requirements, and external legal advice. IESO auditor, KPMG, has provided a final draft accounting opinion that the principles of the structure are sound, which will be updated after the legislation, regulations and commercial agreements are complete. KPMG advises that the variance account created by the proposed legislation meets the accounting criteria for the recognition of a "regulatory asset." This opinion can be released publicly if desired; however, given that the KPMG opinion is highly technical and contains information pertaining to the proposed legislation, the ministry is not recommending its immediate release and is considering alternative options to propose. In addition, the opinion may not change the likelihood of a contrary opinion by the OAG, but does provide a tool for government to point to in justifying its decisions.

There is also a risk that credit rating agencies and the market may take a view as to the size of the GA refinancing that is possible before becoming unconstitutional. If the fair adjustment and fair allocation amounts exceeds this outlook, it may increase the perceived risk of the investment asset and therefore its financeability/saleability, which would result in reduced market uptake and reduce the amount of near term rate reduction that would be achievable under this mechanism. This may require rate increases greater than the rate of CPI to maintain the integrity of the structure. This is why the increases in electricity rates between May 2018 and June 2021 are to be set by regulation as opposed to legislating that they increase by CPI.

It may not be possible to legally hold the rate reductions to increase by CPI, and if the government wanted to hold to this commitment, the difference would need to come out of the tax base, which has not been forecasted nor included in the fiscal plan. Each percentage point of reduction that the structure cannot provide would need to be addressed by an appropriate alternative mechanism and would result in an approximate $125-150M cost to the government annually.

Further, if IESO is not able to sell the regulatory asset (i.e., the OPG SPV/Trust is unable to get financing to purchase it), then IESO would require financing from an alternative source. IESO has requested a backstop credit facility from the OFA. This would be associated with a fiscal impact risk.

Legislative Officers

The Ontario Auditor General (OAG) has expressed views on rate regulated accounting, which will likely be raised again upon the implementation of this suite of initiatives. The OAG was provided copies of the Cabinet Submission seeking policy approval for

Ontario's Fair Hydro Plan and has been briefed by officials from the Ministry of Energy. The OAG will have opportunities to publicly state her views through the 2017 Public Accounts based on the IESO adoption of regulated accounting in its 2016 financial statements, as well as in the Public Accounts committee in the summer of 2018 and in her pre-election report.

Data and assumptions that underpin the GA refinancing proposal have been submitted to the Financial Accountability Officer (FAO). The FAO is expected to have an opinion on how this proposal may impact the state of the province's finances.

OPG Mechanism

There are several risks associated with the proposed OPG mechanism:

- Accountability:
    - Bill attempts to balance the independence of the OPG Trust/SPV with regulatory oversight and the market's need for certainty in recovering the GA financing;
    - As mentioned, no party will have the ability to remove OPG in its role as the investment asset owner. The mechanism could be criticised for not providing for an appropriate level of accountability to the government or the public, due to the limited amount of government control of the entity, and future rate increases. However, this is seen by the markets as an essential component for the structure to operate.
- New structure:
    - The structure is complex and involves: IESO as originator of the regulated asset and responsible for flow of funds; OEB as regulator of the new mechanism; OPG responsible for financing and managing the mechanism; and Ontario providing ongoing equity capital infusions to OPG and backstop.
    - The addition of financial agency to the current operational obligations of OPG is not the current expertise of OPG. However, OPG has experience managing large financial assets and liabilities through the jointly managed Ontario Nuclear Funds as well as its own pension fund. In addition, this new role could possibly dilute OPG's focus on current high priority responsibilities (i.e., electricity generation and nuclear refurbishment).
    - This financing structure would be unique to Canada – uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise required.
    - There is a risk that at the next opportunity to review the OPG compensation framework, they make the case that there is no national comparator for this aspect of their work and they should therefore receive further exemptions from the rules (OPG nuclear executives do not need to find national comparators for compensation determination).
    - It is unknown what the magnitude of transaction, administrative, and consultant costs that OPG would incur would be. OEB would review OPG's cost as the Financial Services Manager to ensure appropriateness.

- Debt:
  - Opportunity for significant shifting of the Ontario's electricity sector over the lifespan of the repayment (30 years). Through sector/policy/government position shifting, possibility of new entity/structure abandoning debt and Ontario having to take a write down.
  - Risk transfer / portion of debt that Ontario would be responsible for would be the higher risk portion.
  - Repayment plan and impact on rate payers highly dependent on interest rates
- The public could claim that the government is simply putting off a problem and making it worse for future generations. The complexity of the structure may be seen as government attempting to cover up its actions.

Program Design and Implementation

The proposal relies heavily on LDCs as a partner for implementation. Many of these changes will need to take place simultaneously and amongst the 70 LDCs in Ontario there is variety in size, efficiency and ability to implement change.

- Program design will require an evaluation of whether the existing programs are effective and achieving their outcomes (e.g. the OESP has a current uptake of 30% and program changes are proposed in advance of an increased effort to reach 100% uptake)
- The OESP matrix no longer follows the Low Income Measure (LIM) which creates inconsistencies between how programs are applied and may put pressure other provincial programs to increase funding amounts.

Connection to the Province's Next Long-Term Energy Plan

Ontario produces and publishes a Long-Term Energy Plan (LTEP) every three to four years, with the next LTEP scheduled for release in the summer of 2017. LTEP principles that will guide decision-making are affordability, reliability, clean energy, community and Indigenous engagement, and conservation. Through extensive consultation with the public, stakeholders and Indigenous partners through the fall of 2016, the ministry has identified key priorities, and, OFHP combined with new policy or program announcements in the LTEP, will provide the comprehensive future planning perspective for Ontario's energy sector. Note: The legislation associated with GA refinancing establishes a framework for the period after the ratepayer relief is set. By design, to achieve financing requirements there is limited control once the plan is set.

STAKEHOLDER AND PARTNER CONSIDERATIONS

General public (including residential and small businesses) – Likely support a proposal that is projected to provide 25% in average rate relief (including the 8% announced in 2016) and other targeted relief for vulnerable Ontarians, but likely to question the longer term implications. Some individuals and organizations will perceive the GA smoothing as unduly burdening future generations. Ability of the public to understand current and

recent changes will heavily depend on government communications. There may be also some criticism that additional fiscal pressure and risk is being taken to benefit some customers that are not in as much need of rate relief as others (i.e., those that own second homes or cottages).

Large Industrial and Commercial Consumers – Will continue to be concerned with the impact of cap and trade on electricity prices and the commitment in the Climate Change Action Plan to use GGRA funds to "keep electricity rate affordable". Will likely respond positively to the recent changes to expand ICI eligibility to some manufacturing and greenhouse Class B customers, but may be more neutral on the rest of the initiatives.

The impact of cap and trade has been added to electricity bills as of January 2017. Class B consumers have raised concerns about the cost of electricity and its impact on their business competitiveness. Although Class A electricity consumers have access to ICI, they are also concerned about the impact of cap and trade on their electricity costs. They are expecting that GGRA funds will be used to mitigate their costs. There is an expectation government is going to take specific action to mitigate their increases due to cap and trade, and given the initiatives proposed in this submission, there is no plan to provide further relief through the Greenhouse Gas Reduction Account. Funding electricity support programs through government funding rather than the rate base will provide some saving to both Class A and B consumers.

Tenants – Likely to support any future price mitigation measures that directly benefit them; likely to react negatively if no mitigation measures target them.

Northern communities – Likely to support the targeted RRRP delivery relief.

Indigenous communities – First Nation members who live on reserves are likely to support the proposal because of the targeted delivery relief. Other Indigenous communities (i.e., Métis, non-status, First Nations without reserve land bases) are likely to react negatively at being excluded from the delivery charge relief.

eNGOs – May react negatively towards any price relief that is not directly tied to energy conservation. May criticize the inclusion of natural gas electricity generators as part of the clean energy costs.

Solar PV sector – May react negatively to price relief as it can be seen to undercut the economics of net metering.

LDCs – Have expressed the need for an additional tool to provide assistance to their customers who are having difficulty with their electricity bills.

DELIVERY

If passed, the legislation will enable the price mitigation measures to begin to take effect on July 1, 2017. The 2017 LTEP will be released to the public in the summer 2017 and would reinforce/integrate with Ontario's Fair Hydro Plan. Regulations are required under the major components of the legislation in order to fuily implement the initiative and clarify program details.

1. Partial Refinancing of the Global Adjustment:

The ratepayer benefit of the OFHP will be in place as of July 1, 2017. The establishment of the regulatory asset and purchase by OPG is expected to take three to six months to implement following the coming into force of the enabling legislation. The IESO has requested a credit facility from the OFA to provide an interim source of financing.

The bill includes a transition provision in circumstances where for technical or operational reasons invoices cannot be adapted in time for the issuance of the first invoices under the program. In these cases, adaptation of invoices must be implemented by August 1, 2017, followed by a subsequent lump sum credit to the consumer once the invoice is adapted.

2. Enhancing Electricity Supports and Shifting Costs to Government Funding:

OESP Enhancements

Changes to regulation will be required to establish and define the parameters for the proposed changes. The financial flow-through mechanism would likely be modeled after processes used for the ORECA (8% rebate). The amendments made in this bill allow for a transition period where the program continues to draw on the existing IESO variance account. IESO is required to notify the Ministry of Energy when it expects the variance account to be depleted (likely sometime in the fall).

The OEB and utilities implemented the 50% credit increase and added the additional eligibility so that more households could qualify for the program as of May 1, 2017.

RRRP Enhancement

Regulations would be required to establish the details of the program. It is possible that for technical reasons not all LDCs will be able to implement the changes required under the program in time for the prescribed effective date. In this case, the regulation will dictate the eligibility of July 1st and give until October 1, 2017 for LDCs to get their systems in place. The LDCs would provide a lump sum credit to customers that would otherwise have been eligible for benefits under the program starting.

On-Reserve First Nations Delivery Credit

The ministry is consulting with affected LDCs, the OEB, the IESO and Chiefs of Ontario (COO) to help develop a plan to identify eligible on-reserve consumers, as well as identify any potential implementation issues.

It is possible that for technical reasons not all LDCs will be able to implement the changes required under the program in time for the prescribed effective date (planned: July 1, 2017). The bill includes transitional provisions that would ensure customers remain eligible for the delivery credit from the prescribed date. Once available, the rebate would appear on the eligible customer's electricity bills as a credit for their delivery line.

There is a risk that either non-status Indigenous communities without reserves or Metis could challenge the program on the grounds that it discriminates against them contrary to section 15 of the Charter. This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based

program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.

LINKAGES

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in summer 2017. These plans identify needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP will balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity for Electricity Consumers Act, 2016*, (ORECA) put in place an 8% rebate for residential, small business customers and farms beginning January 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users earlier than planned. For all other consumers the DRC will be removed by April 2018.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. As part of OFHP, ICI eligibility was recently expanded to allow for the participation of the manufacturing and greenhouse sectors with an average month peak demand greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI benefits all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to $2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

The commitment to mitigate the cap and trade impact on electricity costs for commercial and industrial consumers (i.e., Class A and B) has not been fully addressed, though the

two recent expansions to the ICI provides for significant potential savings. Funding electricity support programs through government funds rather than the rate base will also provide saving to Class A and B consumers.

The CCAP committed to a new Climate Change agency that would act as one window for the delivery of climate change-related programs. The Green Ontario Fund (GreenON) - is tasked to develop programs and services designed to:

- Reduce greenhouse gas emissions from housing from buildings and the production of goods; and,
- Increase uptake and overcome market barriers of low-carbon technologies and processes.

The CCAP committed that the government consult on and develop options to mitigate the impact of carbon pricing and resulting increased utility costs on residential tenants. The mitigation is proposed because tenants do not usually have the opportunity to make changes to their building envelope (e.g. windows, insulation) or major appliances that would allow them to address utility costs themselves. On April 24, 2017, the government introduced the *Rental Fairness Act, 2017* which, if passed, would remove above-guideline rent increases for utilities, to protect tenants from carbon costs and encourage landlords to make their buildings more energy efficient.

Proposed Cabinet Minute

Approval of draft bill for introduction

Cabinet approved version 1-TP of this draft legislation for introduction, subject to the following:

1. The Office of Legislative Counsel is authorized to prepare a French version and to make minor adjustments to the English version, for the purpose of ensuring consistency between the two versions and making other improvements or correcting mistakes discovered in the translation process.

2. ENERGY report back, pending Royal Assent, with regulation and associated regulatory amendments for approval.

3. ENERGY work with Cabinet Office and Premier's office to develop a communications plan.

1. accounting → mingmts

BY

KPMG

Risk → assessment → right to borrow market →

Oct 2 – 1st debt placement

Ontario

Implementation of Ontario's Fair Hydro Plan

Ministry of Energy

May 10, 2017

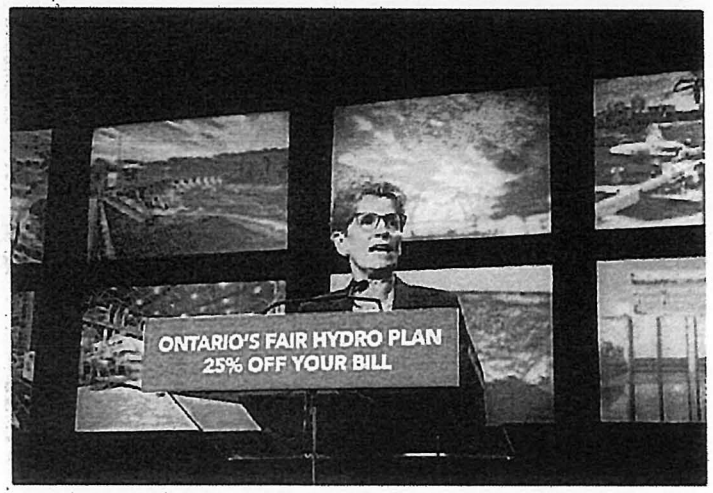
Minister

Deputy Minister

Ontario

Context

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills by 25% for a typical residential consumer, starting in the summer of 2017. About half a million small businesses and farms are also expected to benefit.



- Any rate increases for residential consumers over four years would be held to the rate of inflation.

- These measures include the 8% rebate introduced in January and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

- The OFHP is part of a significant system restructuring that will address long-standing policy challenges and ensure greater fairness.

- The legislative framework required to fully implement OFHP is set out in this presentation.

Ontario

Context

- Ontario's Fair Hydro Plan (OFHP) has the following major components:

1. Refinancing the Global Adjustment (GA);

2. Helping vulnerable electricity consumers;
   - Ontario Electricity Support Program (OESP);
   - Rural or Remote Rate Protection (RRRP) program;
   - On-Reserve First Nations Delivery Credit; and
   - Affordability Fund.

3. Extending the Industrial Conservation Initiative (ICI);

4. Improving Sector Efficiency; and

5. Modernizing Ontario's Electricity Market.

Ontario

Context – Action To Date

- Since the announcement of Ontario's Fair Hydro Plan (OFHP), a number components have been implemented.

- In April 2017, the Affordability Fund Trust was established. It is expected that electricity distributors will be able to begin applying to the Affordability Fund Trust in Summer 2017.

- In April 2017, ICI was expanded to allow eligible electricity consumers in the manufacturing and greenhouse sectors (i.e., with North American Industry Classification Standard (NAICS) codes commencing with the digits "31", "32", "33", and "1114") in Ontario with an average monthly peak demand of greater than 500 kW and less than 1 MW to opt in to ICI.

- The recovery of the Ontario Electricity Support Program (OESP) from the rate-base was removed as of May 1, 2017.

- On April 20, 2017, the Ontario Energy Board (OEB) announced new Regulated Price Plan (RPP) rates effective May 1st that include a portion of the bill reduction proposed under the OFHP (see next slide for more details). The legislation for GA refinancing requires OEB to issue a further rate adjustment no later than 15 business days after the legislation receives Royal Assent to achieve the full 25% for a typical consumer. This means new rates are expected to be effective July 1, 2017.

Ontario

New Regulated Price Plan Rates – Effective May 1, 2017

- Effective May 1, new RPP rates released by the OEB will include 50% of the estimated reduction in the Global Adjustment (GA). This reduction in RPP rates, along with the removal of the OESP charge and the existing 8% rebate, will mean that May bills will be 17% lower than they would otherwise have been for an average consumer.
  - It is standard OEB practice to include only a portion of future costs and benefits if they are not yet certain (i.e., pending legislation).

TOU Price Periods	Existing TOU Prices	Forecast TOU Prices without consideration of the proposed Fair Hydro Plan	May 1, 2017 TOU Prices including a portion of the proposed Fair Hydro Plan
Off-Peak	8.7¢/kWh	9.1¢/kWh	7.7 ¢/kWh
Mid-Peak	13.2 ¢/kWh	13.3 ¢/kWh	11.3 ¢/kWh
On-Peak	18.0 ¢/kWh	18.5 ¢/kWh	15.7 ¢/kWh

Source: OEB

Ontario

Ontario's Fair Hydro Plan – Proposed Legislation

- To implement OFHP, the Ministry has prepared the Fair Hydro Act, 2017 in close collaboration with key ministries (i.e., Treasury Board, Finance, Attorney General, Cabinet Office), agencies (i.e., OEB, IESO, OPG) and third party financial advisors and local distribution companies (LDCs).
  - The proposed Fair Hydro Act, 2017 would be an omnibus bill with 2 schedules: the Ontario Fair Hydro Plan Act, 2017 and amendments to the Ontario Energy Board Act, 1998 and Electricity Act, 1998.

- The proposed OFHP legislation, supporting regulation and amendments to existing legislation (e.g., *Electricity Act* and *Ontario Energy Board Act*) will enable implementation of the following key components of the Plan:

  1. Refinancing the Global Adjustment (GA) – The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

  2. Helping Vulnerable Electricity Consumers – The proposed legislation broadens the Rural or Remote Rate Program (RRRP), expands the Ontario Electricity Support Program (OESP) and establishes a new On-Reserve First Nations Delivery Credit. The legislation also allows for these programs to be funded through the tax-base.

- This presentation provides an overview of these key components of OFHP legislation.

Ontario

Ontario's Fair Hydro Plan – Critical Path

Week of May 8, 2017

- May 9 – TB/MBC Report Back
- May 10 – LRC/Cabinet
- May 11 – Introduce Legislation

Week of May 15, 2017

- May 15 – Regulatory Posting
- May 15 to18 – House Debate

Week of May 22, 2017

- May 24 – Committee Review – Public Hearings

Week of May 29, 2017

- May 29 – Committee Review – Clause by Clause
- TBD – Passage of the Legislation/Royal Assent

June 2017

- TBD – LRC for Regulations
- TBD – New OEB/RPP Rate and Issue Orders to LDCs on RRRP Charge/Benefit

July 2017

- July 1 – New RPP rates, RRRP Charge/ Benefit and FN Delivery Credit in Effect

Ontario

1) Refinancing the Global Adjustment

Ontario

GA Refinancing – Overview of Proposed Legislation

- The Fair Hydro Act, 2017 attempts to balance several key factors including financeability, accounting requirements and legal considerations.

- Following an extensive consultation process with internal and external experts, the proposed legislation strikes a balance between these three factors by:

  – Supporting financeability through a number of features, including enabling a provincial guarantee and provisions intended to provide certainty to investors in order to reduce borrowing costs and attract a wide investor base;

  – Addressing the necessary accounting requirements through mechanisms to record funding, interest and the transfer of regulatory assets to avoid a fiscal impact to the province; and

  – Mitigating legal risk by developing a methodology that attempts to fairly aligns costs and benefits.

- Slides 9 to 16 detail the mechanics of the Fair Hydro Plan Act, 2017.

Ontario

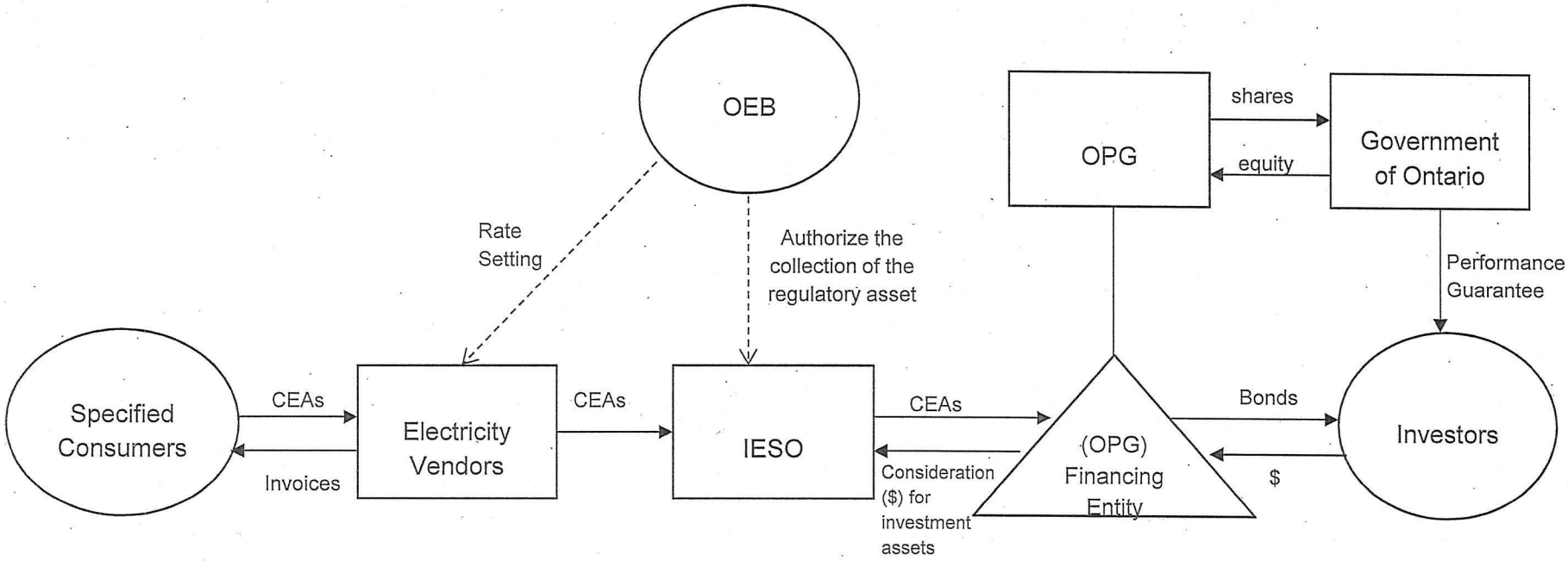
GA Refinancing – Overview of Proposed Legislation

- Refinancing the Global Adjustment would be achieved through stand-alone legislation, regulations and amendments to existing legislation and regulations.

- The proposed legislation would outline:
  - Roles and responsibilities for the OEB, IESO, OPG and the Province;
  - A detailed Preamble, Purpose and Definitions;
  - Details with respect to cost allocation, rate reduction methodology, implementation and financing;
  - Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
  - Amendments to other acts.

- The associated amendments to existing legislation and regulations include:
  - *Electricity Act, 1998*: amendments to provide OPG with the authority to establish a special purpose vehicle (SPV) for the investment asset and *Ontario Energy Board Act, 1998*: amendments to allow for OEB to set rates recognizing GA refinancing.

GA Refinancing – Roles and Responsibilities



Note: CEAs are "clean energy adjustments"

Ontario

GA Refinancing – Legislative Overview

Preamble and Purpose

- The preamble of the proposed legislation establishes the rationale for the allocation of "clean energy costs" over time. That is, the development of a clean, modern and reliable electricity system has increased costs for ratepayers.

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of these investments are allocated fairly among present and future generations of consumers.
  - Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment. Note: These mechanisms are described in the following slides.

- The legislation also restricts the OEB, Minister of Energy and the Crown from reducing, impairing or ending Clean Energy Adjustments (see slide 10) in the future:
  - The Lieutenant Governor in Council may authorize the Ministers of Finance and Energy to enter into guarantees and indemnities related to the Act.
- The proposed legislation aligns eligibility with the *Ontario Rebate for Electricity Consumers Act, 2016*.

Ontario

GA Refinancing – Legislative Overview (Cont'd)

Fair Adjustment

- Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for the period July 1, 2017 to April 30, 2018.
  - Under the legislation, the OEB must determine the amount within 15 business days of Royal Assent.

- The Fair Adjustment also allows the Lieutenant Governor in Council (LGIC) to make regulations prescribing electricity rates for the period after May 1, 2018.

Clean Energy Adjustment

- The Clean Energy Adjustment is the mechanism to begin to recover the under-collection of GA from eligible consumers during the recovery period.
  - This is an adjustment to a consumer invoice on a monthly basis to repay principal, interest and other financing.
  - IESO and each electricity distributor will act as an agent for the financing entity to impose, invoice and collect the clean energy adjustments.

- The proposed Act outlines:
  - The process for determining the total Clean Energy Adjustment amount;
  - The obligation on individual ratepayers for the repayment of the amount; and
  - The inability to offset or bypass re-collection of the amount.

Ontario

GA Refinancing – Legislative Overview (Cont'd)

Fair Allocation Amount

- The Fair Allocation Amount is a calculation and allocation of clean energy costs and clean energy benefits over time.
  - The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager. Subsequent calculations may be undertaken by other agents as prescribed by the Minister.

- It is expected that the calculation would lead to decreased rates in the near term with upward pressure on rates in the long term.

- Under the legislation the calculation of the Fair Allocation Amount is guided by the principles and purposes of the Act including the proportional allocation of clean energy costs and benefits.

Ontario

GA Refinancing – Legislative Overview (Cont'd)

Financial Services Manager

- The legislation appoints OPG as the Financial Services Manager.

Financing Plan

- Under the legislation, OPG, as the Financial Services Manager, is required to prepare a Financing Plan and submit it to the Minister of Energy for information purposes.

- The Financing Plan sets out the funding obligations and amounts related to the financing of the under-collected GA amounts.

- The Financing Plan shall be governed by principles, including:
  - Fair Adjustment period (July 1, 2017 to June 30, 2021);
  - Reasonable assumptions; and
  - Alignment with the Fair Allocation Amount.

Ontario

GA Refinancing – Legislative Overview (Cont'd)

- The ability to engage in the fair distribution of clean energy costs requires financing during periods where the collection of the clean energy costs is deferred to later years.

- The legislation outlines mechanisms that are required to enable the financing and meet requirements for rating agencies and investors.

Regulatory Asset

- IESO will have a funding deferral resulting from the reduction in amounts collected during the first four years.

- The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a Regulatory Asset.
  - OEB would determine rates to allow IESO to recover under-collection recorded in its variance account in the event the under-collection is not sold.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust.

Ontario

GA Refinancing – Legislative Overview (Cont'd)

Investment Asset

- The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".
  - The legislation establishes property rights for the Investment Asset such as the right to collect principal and interest and financing costs in the form of the clean energy adjustment from eligible consumers.

- The Investment Asset may in turn be sold to other investors or group of investors.

Amendments to Other Acts

- The legislation includes required amendments to existing legislation such as:
  - The Electricity Act, 1998 – to expand the objects of IESO and OPG to enable them to perform their rights and obligations in the proposed Act
  - The Ontario Energy Board Act, 1998 – to address license conditions and the determination of regulated payments.

Ontario

GA Refinancing – Policy Considerations

- The proposed legislation to enable refinancing of the GA provides significant rate relief to electricity consumers that have been burdened with the costs of the necessary investments that have been made to decarbonize and modernize the province's electricity infrastructure.

- Given the long term nature of this program (i.e., approximately thirty years), the calculations related to refinancing of the GA set out in the proposed legislation will be subject to fluctuations in Ontario electricity demand, GA, and interest rates in the medium to long-term.
  - Should electricity demand be higher than forecast as a result of greater electrification, the cost of paying off the debt will be spread over a greater pool of consumption and decreasing future costs for individual ratepayers. Note: The reverse is also true in regards to decreasing demand.
  - Should interest costs increase from the assumed 5%, total borrowing costs would rise. Given that this a unique offering, managing investor confidence will be key to ensure borrowing costs don't rise.

- The Ministry has developed legislation in close collaboration with key ministries (i.e., Treasury Board, Finance, Attorney General, Cabinet Office), agencies (i.e., OEB, IESO, OPG) and third party financial advisors and local distribution companies (LDCs) to minimize risk, and to balance accounting and legal considerations and the need for financeability, where possible. Blakes has acted as the Ministry's external counsel in the development of the legislation providing expertise in securitization, constitutional law and energy law.

Ontario

GA Refinancing – Policy Considerations (cont'd)

- The legislation establishes a framework for the period after the ratepayer relief is set. By design, to achieve financing requirements there is limited control once the plan is set.

- The legislation recognizes the four-year period ending June 30, 2021, consistent with how the full reduction from OFHP are expected to be addressed through a July 1st RPP rate adjustment. Note: preliminary estimates presented in the March 1, 2017 Cabinet submission assumed calendar year 2017 to 2022.

- Bill impacts would vary between individual customers:
  - Small consumers (i.e., condo residents) will receive less than 25%;
  - Larger customers (i.e., electrically heated homes) will receive more than 25%; and
  - Lower-income Ontarians and those living in eligible rural communities would receive even greater reductions, as much as 40 to 50%.

- To support financeability, inflationary increases over the first four years would be set out in regulation rather than legislation.

Ontario

GA Refinancing – Financing Considerations

- The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.
  - The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recovered.
  - The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year.
- It is still possible that the full value of the Regulatory Asset may not be purchased.
  - In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.
- In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt.
  - The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
  - The Ministry of Energy has received an appropriation for $1.1 billion operating asset to support these injections for the fiscal year 2017/18, and will report back through PRRT for future funding. Based on the final fair allocation amount calculation, the equity injections would be required until the period of recovery begins.
  - The injections will be fiscally neutral for the province as they will be offset with the value of shares purchased from OPG.
- OPG will seek to achieve the highest possible credit rating (AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV/Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

Ontario

GA Refinancing – Accounting Considerations

- The legislation to enable the refinancing of the GA has benefitted from the review and input of KPMG, E&Y and OPCD.
- The proposed legislation establishes mechanisms to enable the funding, sale and transfer between IESO and OPG that respond to the accounting requirements and advice outlined in the March 1, 2017 Cabinet Submission, such as concerns regarding consolidation by the Province.
- Under the proposed legislation, OEB will issue an "accounting order" to authorize IESO to create a variance account in which it will record the funding shortfall and recover the shortfall in accordance with the legislation and regulations. KPMG advises that the variance account created by the proposed legislation meets the accounting criteria for the recognition of a "regulatory asset".
- The Auditor General (AG) may chose to comment on OFHP in an annual or special report. Ministry and agency staff have provided a technical briefing to the AG and her office.
- The proposed legislation and the associated amendments to the Electricity Act, 1998, enshrine OPG's SPV/Trust as a stand-alone entity able to conduct business separately under a Trust agreement. Note: To further support the operations and mechanics of the OPG SPV/Trust, additional work will be done through the regulations and supporting agreements/documents. E&Y concurs with OPG's assessment that accounting requirements to support "consolidation" of OPG SPV / Trust with OPG Inc. can be met.
  - OPG will have the authority to set up the SPV/Trust and assign it with powers regarding decision-making, funding and ongoing operation.
  - OPG and IESO are developing a process that will allow interest payments to occur under GA Refinancing.

Ontario

GA Refinancing – Legal Considerations

- In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

- Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:
  - The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.
  - If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).
  - By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.
  - The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

Ontario

GA Refinancing – Legal Considerations

- The bill provides for provincial assurances, guarantees and a statutory cause of action.

- **The provincial assurance provision** is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

- The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

- In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

- **The guarantee provisions** are intended to backstop the provincial assurance provision and provide that:
  - the Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
  - the Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

- Legal risk to the province will be assessed as the agreements are negotiated and drafted.

- **A statutory cause of action** may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

Ontario

2) Helping Vulnerable Electricity Consumers

Ontario

Electricity Support Programs to Help the Most Vulnerable – Overview

- To provide targeted assistance to the customers and alleviate electricity cost burden, Cabinet agreed on March 1st 2017 to:
  - **Enhance Rural or Remote Rate Protection** (RRRP) by funding its costs through the tax base and providing additional support to customers of designated Hydro One rate classes and other high distribution cost Local Distribution Companies (LDCs).
  - **Enhance Ontario Electricity Support Program** (OESP) by funding its costs through the tax base and increasing eligible benefits by 50%.
  - **Implement On-Reserve First Nations Delivery Credit**, to remove Delivery charges for on-reserve First Nations customers.
- Cabinet also agreed to establish a new Affordability Fund, which would provide energy efficiency measures at no or minimal cost to those who are ineligible for low-income conservation programs, have difficulty paying their electricity bills, and who cannot make energy efficiency upgrades without financial assistance.

Ontario

Rural or Remote Rate Protection – Broadening Rate Protection

- Rural or Remote Rate Protection (RRRP) mitigates some of the high costs of electricity distribution in rural or remote areas of the Province. It is a legacy program of the old Ontario Hydro and has existed in its current form since 2001.

Shifting RRRP Costs to the Tax-base

- Section 79 of the OEB Act is amended to provide the Ministry the authority to prescribe, through regulation, classes of consumers whose cost will be transferred from the rate-base to the tax-base.
- If the proposed legislative amendments are approved, the government intends to propose regulatory amendments that would prescribe Hydro One's R2 customers as receiving RRRP from appropriated funds effective July 1, 2017. This would fulfill the government's intention to transfer the majority of the costs of administering the RRRP program to the tax-base.

Broadened Distribution Rate Protection

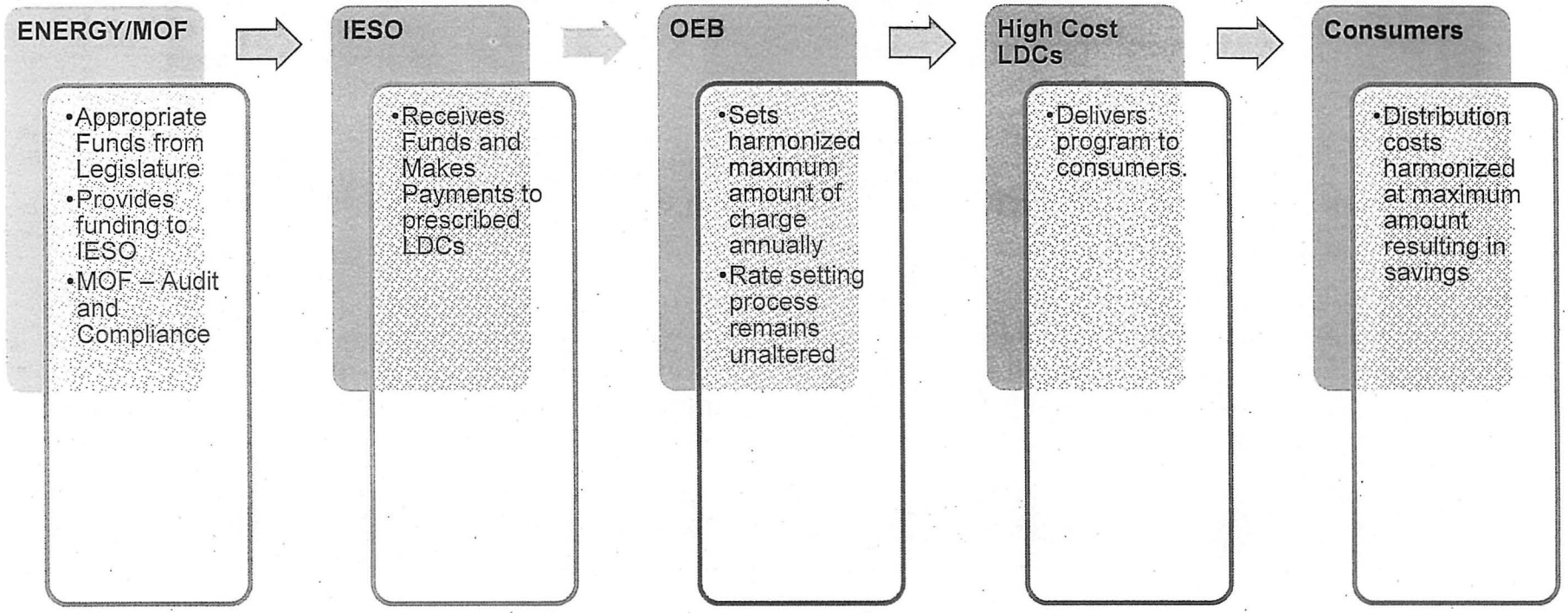
- In addition, Energy is proposing legislative amendments that will broaden rate protection by creating a new distribution rate protection program to complement RRRP. This new program would be funded through appropriated funds and would provide significant benefits to prescribed residential customers.
- Distribution rate protection would be extended to eligible residential customers served by LDCs with the highest distribution costs. Roughly 800,000 customers would receive benefits from the broadened rate protection.
  - These LDCs are: Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc.
- The legislative amendments would provide Cabinet with the authority to create regulations defining the program.

Ontario

Broadening Distribution Rate Protection – Program Mechanics

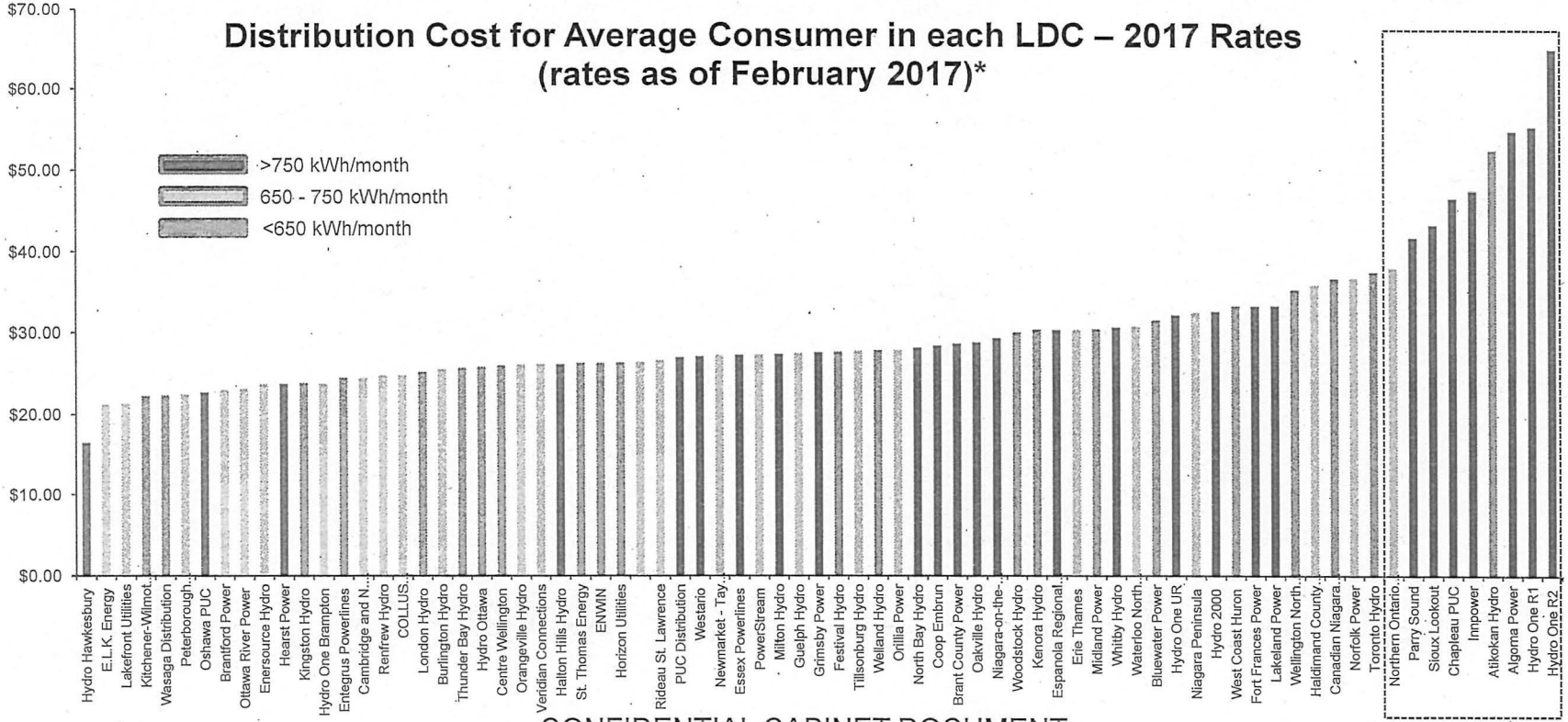
- Upon Royal Assent, Energy intends to propose regulations that would outline how the program mechanics would work.
- The maximum charge would not affect the role of the OEB in setting rates. Affected LDCs would still need to file rate applications with the OEB to assess whether or not their costs are reasonable.
- The difference between OEB-approved rates and the maximum monthly charge would be reimbursed to LDCs from the tax-base.

Roles and Responsibilities



Enhancing the Rural or Remote Protection Program (RRRP)

- The table below shows what 2017 distribution costs are projected to be for the average consumer within each LDC across the province, and highlights the highest-cost distribution rates.
- The charts on the following slides show what the benefits would be in each LDC if the fiscal plan was used to support harmonizing distribution costs for customers of the LDCs in the top ~1/8th of rate classes at $38/month.



CONFIDENTIAL CABINET DOCUMENT

Rates may have changed due to OEB decisions.

Ontario Electricity Support Program (OESP) – Overview

- The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by a rebate directly on bills. The OESP is currently funded by the rate base.
- OESP benefits vary by income level and family size, and there are two benefit scales that include:
  - The basic program credit ranged from $30/month to $50/month.
  - An enhanced credit that ranged from $45/month to $75/month for consumers that are either Indigenous, use electric heat or have certain medical devices.
- The OESP launched on January 1, 2016, and in just over a year:
  - Over 192,000 have been enrolled in the program representing 33% of the total targeted low-income population. Nearly 300,000 applications have been received.
  - As of March 1, 2017, over $60million in benefits have been provided to vulnerable consumers.
  - 172 intake agencies have been mobilized to assist low income consumers to apply for the OESP.
- The March 1, 2017 Cabinet Minute directed the Ministry to expand every benefit level of the OESP by 50%, move the program from a ratepayer funded program to a government funded program beginning in 2017 and pursuing additional measures to substantially increase take-up.







Ontario

Ontario Electricity Support Program (OESP) (cont'd)

- On March 23, 2017, the OEB issued a Decision and Order to cancel the OESP charge on all customer bills on May 1 ($0.0011 per kilowatt-hour consumed), and begin using the variance account to continue financing the program (the net difference between the amount of OESP charge collected and the amount paid out)

- On April 11, 2017, amendments to the OESP regulation (O.Reg. 314/15) were filed. These amendments include expanding the credits amounts by 50% and introducing new eligibility categories so that more Ontarians are eligible for the program.
  - The proposed legislative change will allow the OESP to be funded from the tax base once the variance account is depleted, and provide Ministry of Finance with audit capabilities to ensure funds are spent as they were intended.

- The legislative change will also provide the necessary authority for the Ministry of Community and Social Services (MCSS) and the OEB to align OESP program delivery with other social assistance programs and help increase program uptake.
  - ENERGY is working with MCSS to enable automatic entitlement for Ontario Works (OW) and Ontario Disability Support Program (ODSP) participants to receive OESP.
  - ENERGY and the OEB are also working with the Canada Revenue Agency (CRA) to eliminate the CRA requirement for "wet signatures" on OESP application forms to streamline the application process.

Ontario Electricity Support Program (OESP) (cont'd)

- The amendments to the OESP regulation (O.Reg. 314/15) are reflected below. Increases in credit amounts are in red, and the new eligibility categories are circled. These changes come into effect on May 1, 2017.

Existing OESP Benefit Scales

Sliding Scale #1		Household Size						
		1	2	3	4	5	6	7 +
Income Bracket	< $28,000	$30	$30	$34	$38	$42	$50	$50
	$28,001 - $39,000	-	-	$30	$34	$38	$42	$50
	$39,001 - $48,000	-	-	-	-	$30	$34	$38
	$48,001 - $52,000	-	-	-	-	-	-	$30

Sliding Scale #2		Household Size						
		1	2	3	4	5	6	7 +
Income Bracket	< $28,000	$45	$45	$50	$55	$60	$75	$75
	$28,001 - $39,000	-	-	$45	$50	$55	$60	$75
	$39,001 - $48,000	-	-	-	-	$45	$50	$55
	$48,001 - $52,000	-	-	-	-	-	-	$45

New Credit Amounts and Eligible Households

Sliding Scale #1		Household Size						
		1	2	3	4	5	6	7 +
Income Bracket	< $28,000	$45	$45	$51	$57	$63	$75	$75
	$28,001 - $39,000	-	$40	$45	$51	$57	$63	$75
	$39,001 - $48,000	-	-	$35	$40	$45	$51	$57
	$48,001 - $52,000	-	-	-	-	$35	$40	$45

Sliding Scale #2		Household Size						
		1	2	3	4	5	6	7 +
Income Bracket	< $28,000	$68	$68	$75	$83	$90	$113	$113
	$28,001 - $39,000	-	$60	$68	$75	$83	$90	$113
	$39,001 - $48,000	-	-	$52	$60	$68	$75	$83
	$48,001 - $52,000	-	-	-	-	$52	$60	$68

Ontario

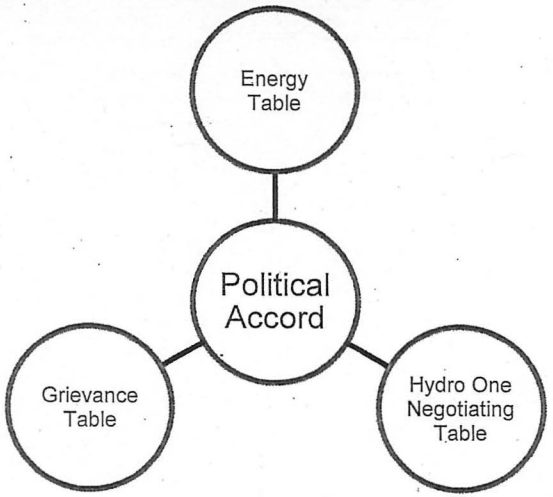
Economic Conditions on Reserve

- On-reserve First Nations customers face unique challenges that impact electricity affordability, such as the poor quality of the housing stock on-reserve. These challenges result in significantly higher electricity consumption levels and costs.
- First Nations living on reserve are particularly vulnerable low-income consumers: the average income is considerably lower compared to First Nations living off reserve and compared to non-Indigenous populations:
  - Average income of First Nations on reserve in Ontario: $21,100;
  - Average income of First Nations off reserve in Ontario: $31,527;
  - Average income of Non-Indigenous people in Ontario: $42,506; and
  - Median incomes on smaller reserves can fall below $10,000 (e.g., Cat Lake FN).
- Employment rates also differ between on-reserve First Nations, off-reserve First Nations and Non-Indigenous individuals, as well as other indices of social vulnerability:
  - 54% of Indigenous people over 15 years old and living on-reserve in Ontario are unemployed or not in the labour force;
  - The on-reserve unemployment rate is 18.3% compared to 6.4% in Ontario generally; and
  - 67% of families residing on-reserve are single parent families, compared to the Canadian equivalent of 19%.
- First Nations are seeking redress for historic grievances related to lands affected by energy developments, such as transmission or distribution infrastructure built on reserve lands and traditional territories where, in some cases, they may not have been appropriately consulted.
- Further, in some circumstances, linear infrastructure corridors cut First Nation reserves in half, significantly disturbing the use and management of an already small land base; the First Nation communities disturbed by the energy infrastructure report having experienced long wait times (e.g., 20 years) for their communities to get connected and receive the benefits of the energy derived from the local infrastructure.

Delivery Credit for On-Reserve Consumers – Overview

- On June 27, 2016, following discussions on Hydro One shares and rates at the Chiefs of Ontario's (COO's) All Chiefs Conference, the Minister of Energy issued a letter directing the OEB to prepare a report providing "advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers".

- On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.



- On December 29, 2016, the OEB provided a report to the Minister which recommended:
  - Elimination of the delivery charge for all on-reserve First Nations residential customers served by licensed distributors, and elimination of the monthly service charge for customers of licensed distributors which charge a bundled rate (no specific delivery charge);
  - Automatically qualify on-reserve First Nations residential customers (~21,500 customers);
  - Continue to provide assistance through OESP and LEAP to eligible on-reserve First Nations customers;
  - The OEB suggested the program should be funded from the tax base as it is targeted to a particular segment of the provincial population.

- On March 1, 2017, Cabinet gave approval to establish "*a new province-wide government funded program beginning in 2017 that would eliminate the delivery charge for First Nations customers on reserve.*"

Ontario

Delivery Credit On-Reserve

- In the spirit of the political accord between the Chiefs of Ontario (COO) and the Province, the government is moving forward with legislation to enable an "On-Reserve" delivery credit.

- The new program would be implemented by amending the Ontario Energy Board Act, 1998 with a new section that would provide:
  - All prescribed on-reserve consumers, the entirety of their delivery line items would be credited.
  - It also provides that for consumers who are served by a distributor that does not have a delivery line item, the monthly service charge or similar charge would be credited (a very few distributors that serve on-reserve customers, such as remote communities, do not have a delivery line item).

- The program would be entirely funded through the tax base.

- The section includes the power to make regulations prescribing further program eligibility details such as:
  - The class of customers eligible (residential full-time, residential seasonal, band offices, commercial, etc.);
  - Whether on-reserve customers who are not status would be eligible, or whether eligibility would be restricted to status individuals only, and the method for determining status, if required;
  - Determining what is considered on-reserve; and
  - Determining the method of calculating the delivery credit.

- Specifics around eligibility, including whether non-status individuals and customers that are not residential are eligible are still subject to ongoing discussion between ENERGY and COO.

Distributor	Number of On-Reserve Residential Customers
Algoma Power Inc.	473
Attawapiskat Power Corporation	336
Bluewater Power Distribution Corporation	237
Cat Lake Power Utility Ltd.	80
Cornwall Electric Distribution	514
Hydro One Networks Inc.	16,679
Hydro One Remote Communities Inc.	2,579
PUC Distribution Inc. (Sault Ste. Marie)	264
Thunder Bay Hydro Electricity Distribution	332
Total Number of Customers	**21,494**

Ontario

Social Programs – Funding Processes

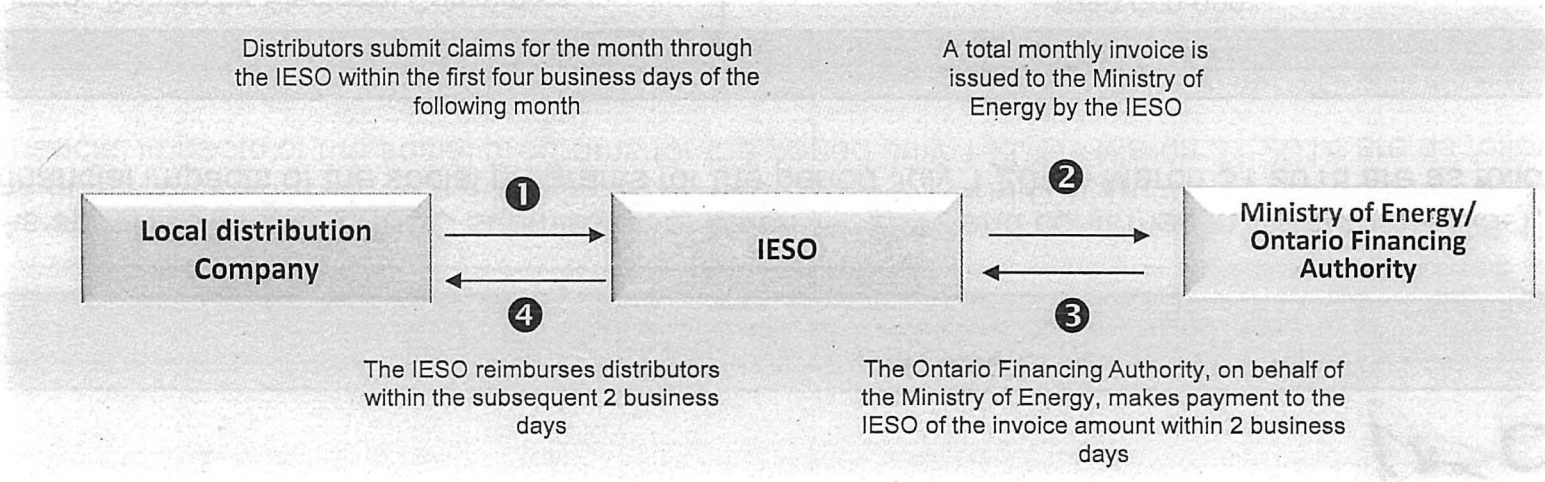
- As social programs are moved to the tax-base, LDCs are reimbursed for credits provided to customers by IESO, which is subsequently reimbursed by ENERGY. This is the same procedure followed for the reimbursement of the 8% Provincial Rebate under the *Ontario Rebate for Electricity Consumers Act, 2016* (ORECA).
- The proposed legislation includes provisions that establish the funding frameworks for these programs that mirror ORECA. These procedures would be further developed through regulation.

Ministry of Finance

- The Fair Hydro Plan Act includes several provisions granting the Ministry of Finance oversight and accountability functions to oversee the flow through of tax-payer money. These include; provisions requiring information to be shared with MOF, enhanced record keeping obligations on parties receiving funds, MOF audit and inspection powers, and offences for being non-compliant.

Independent Electricity System Operator

- The IESO is responsible for receiving payments from the Minister of Energy and compensating distributors for the lost revenue as a result of delivering the program. Each LDC will require a program specific variance account where the balances will be tracked by IESO.
- The IESO will then make payments to distributors from the money appropriated from the legislature in accordance with the outstanding balances identified in the variance accounts.



Ontario

Social Programs and OREC – Budget

- As approved in the TB/MBC submission of Mach 1st, 2017 and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31 2018 are as follows:

Program	2017-18 Budget
Ontario Rebate for Electricity Consumers	$939,000,000
Rural or Remote Rate Protection	$344,000,000
Ontario Electricity Support Program	$140,000,000
On-Reserve First Nations Delivery Credit	$15,000,000
Total	**$1,438,000,000**

- The IESO manages a variance account for the OESP, which holds the difference between the amount of OESP charge collected from the rate base, and the amount of OESP paid out in the form of credits. The amount in the variance account is about $120 million as of March 1, 2017.
- These funds will be used to fund the OESP program until the variance account is depleted, at which point the transfer payment line will be used to finance the program costs.
- ENERGY will return with updated out-year figures as part of the 2018-19 PRRT process.

Ontario

Affordability Fund

- On March 2, 2017, the government announced the establishment of an Affordability Fund as part of its Fair Hydro Plan.
  - Electricity distributors and other stakeholders had indicated to the government that there is an immediate need to help customers in bill arrears and facing service disconnection.
- The Affordability Fund will provide energy efficiency measures to electricity customers who are not eligible for existing low-income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.
- ENERGY worked with Hydro One to establish an independent Trust to administer the Fund. A centralized delivery model through a Trust was established to ensure independent oversight of funds and to facilitate efficient distribution of funds to electricity distributors.
  - The 'Affordability Fund Trust' was established on March 23, 2017, when the Original Trustee signed a Declaration of Trust ('Trust Deed'). The Original Trustee is Computershare, a professional Trustee company which partners with some of the largest public and private organizations in Canada and globally.
  - On March 24, 2017, ENERGY entered into a Transfer Payment Agreement with the Original Trustee to flow $100 million in fiscal year 2016/17 to the Affordability Fund Trust.
  - The Original Trustee will be replaced by a Board of Trustees, based on the recommendations of an Advisory Committee established by ENERGY, by the end of May. The Board of Trustees will be responsible for administering the Fund, including distributing funds to electricity distributors across the province based on an application process and targeted eligibility criteria. Trustees will include representatives from three electricity distributors and two social service agencies, as well as one non-voting government representative.
  - It is expected that electricity distributors will be able to start applying for funds in Summer 2017.

Ontario

COMMUNICATIONS

Ontario

Communications

Communications Objective:

- Raise awareness about Ontario's commitment to lower electricity costs for ratepayers through the rollout of Ontario's Fair Hydro Plan (OFHP) initiatives.

Strategic Approach:

- Use introduction of legislation milestone to continue increasing awareness of the OFHP and how its measures would lower electricity rates across the province.
- Raise awareness, province wide, using earned, owned, shared and purchased media.
- Support LDCs with a comprehensive communications package.
- Leverage LDC, agency and partner channels.
- Prepare reactive materials will include updated Q&As, key messages and issues management plan.

Audiences:

- All electricity consumers in Ontario.
- Consumer subgroups: residential households, low-income households, small and medium sized businesses, farms and Indigenous communities.

Ontario

Communications (cont'd)

Key Messages:

- *Ontario's Fair Hydro Plan proposes new measures to lower electricity bills by 25 per cent on average for all residential households and as many as half a million small businesses and farms. This builds on the previously announced 8 per cent rebate.*

- *Rates increases held to inflation for four years.*

- *Lower-income Ontarians and those living in eligible rural communities would receive even greater reductions, as much as a 40 to 50 per cent cut.*

- *These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills.*

- *This is the largest reduction to electricity rates in Ontario's history.*

Ontario

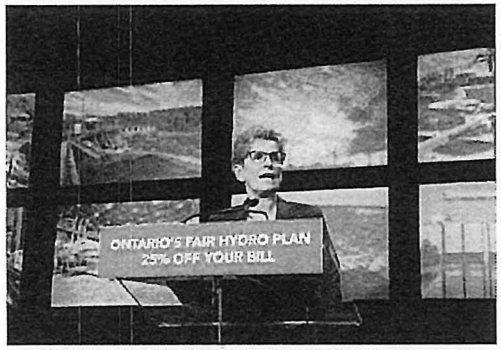
Communications (cont'd)

Communications – Tactical Approach

	April/May 2017	May/June 2017	June 2017 to Fall
Regional Rollout Examples: • MPP Template • Speeches • Media event • Op-ed, media pitch • Editorial board meeting	• MPP echo announcements • Minister speaking engagements (ongoing)	• MPP echo announcements • Minister speaking engagements (ongoing)	• Ministry and MPP echo news releases/announcements/Backgrounders/Key messages/ QA (dependent on relevant legislations and/or regulation passage)
Earned Examples: • News release, etc. • Remarks • Event • Calls/emails to targeted audiences • Multilingual media • Fact sheets • House Statement	• Preconditioned earned media: examples of innovative technology success stories • LDC Toolkit development (FAQs, matte stories, digital assets)	• Introduction of legislation May 11th • News release • House statement • QAs • Targeted media outreach • Deliver toolkit to LDCs	• Pitch and disseminate matte materials to community and multi-cultural channels
Digital / Social Examples: • Web content • Twitter/Facebook • Keyword / interactive web • Blogger outreach • Videos	• Web and social media content development (ongoing)	• Updated web and social media content (aligned with TV creative)	• Next phase of digital campaign • Develop sharable content with focus on bill savings
Paid *(must include budget)* Examples: • TV/radio/newspaper • Online banners/ads • Advertorial • Householder/direct mail	• Radio ads • Digital banner ads	• Prepare next wave ads – TV, digital, community channels	• TV ads (timing July)
Shared Examples: - Agency and utility inserts, websites, collateral social accounts etc. - Third party agreements	• Develop and share materials to support LDCs	• Bill inserts • Leverage and support agency comms (OEB, IESO) • Chambers of Commerce events	• LDC communications with customers • Bill inserts, digital content, brochureware • Canadian Manufacturers Association opportunities

Ontario's Fair Hydro Plan Rollout To Date

- Since launch in early March, Government has undertaken extensive province-wide rollout and promotion of OFHP.
- The Premier's Speech on March 2, 2017 has been followed by 13 echo announcements in communities across Ontario.













CONFIDENTIAL CABINET DOCUMENT

Ontario

Media Coverage of OFHP

"Alectra Utilities' customers could see a 27 per cent cut in their electricity costs by the summer under a proposed strategy announced by the Ontario government that promotes a 25 per cent reduction in hydro bills."
HamiltonNews.com
May 8, 2017

HamiltonNews.com

"Reducing hydro bills the fair way forward: Wynne"
Toronto Star, March 7, 2017

TORONTO STAR

"Durham households and small businesses should expect lower hydro bills"
Oshawa This Week, April 12, 2017

DurhamRegion.com

"Minister visits Orillia to outline hydro plan"
Orilia Packet and Times,
March 24, 2017

orilliapacket com

OFHP Advertising Phase I – Radio and Digital

- Radio campaign launched March 13th for four weeks, and was extremely successful, with 6,112,608 impressions (based on adults age 25-54) in 89 local markets across Ontario.

- Social and digital ads ran province-wide in English and French with an estimated 10,054,309 impressions.

- Multi-cultural radio followed starting March 20th for three weeks in 19 languages.

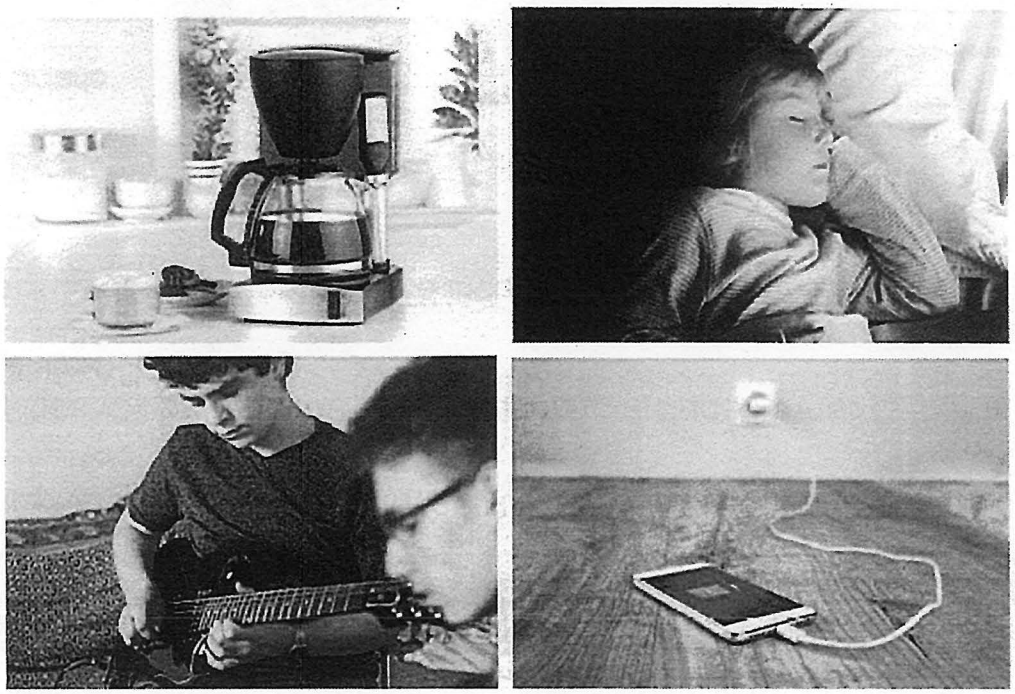


Ontario

OFHP Advertising Phase II – TV, Print, Digital

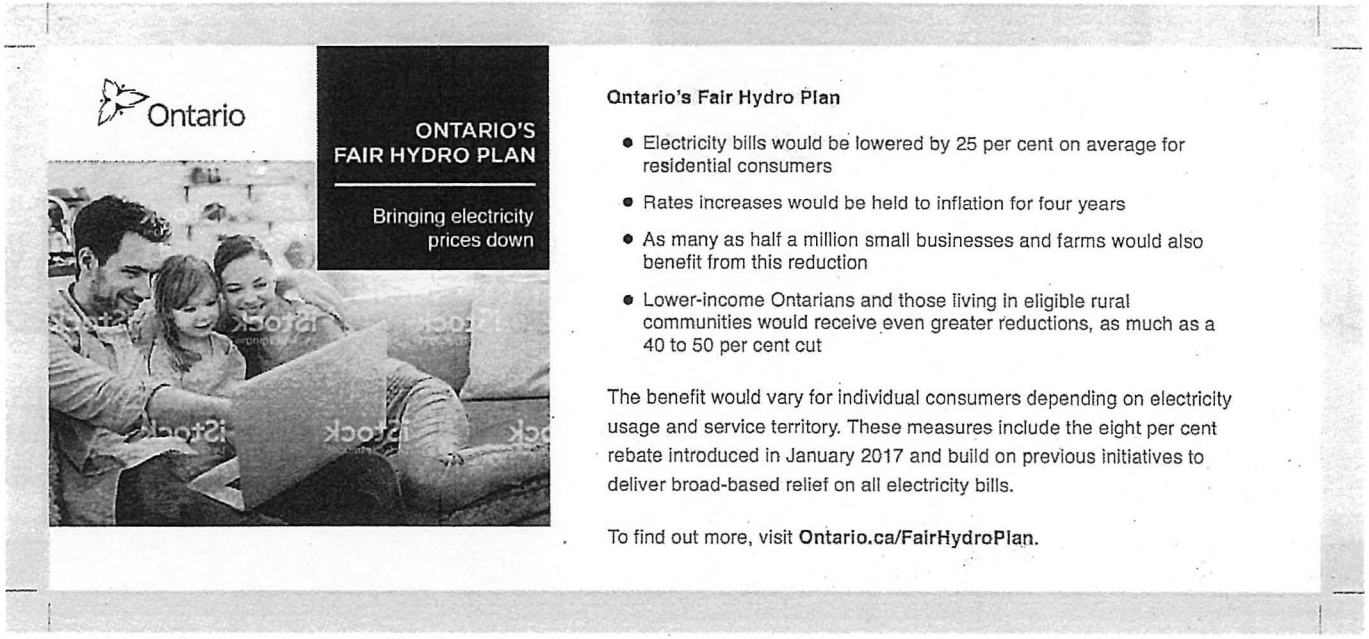
- Phase II is expected to launch early July 2017 with an integrated television advertising campaign supported by radio, print, digital and social media.

- A "slice of life" commercial is in development featuring Ontario's Fair Hydro Plan and how it helps people in their everyday lives.



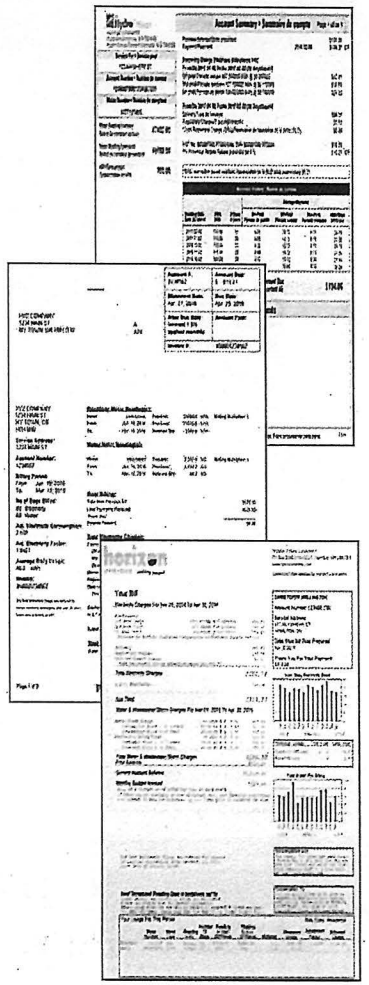
Electricity Bill Inserts

- The Ministry of Energy is asking electricity utilities to include inserts on the OFHP in bills, starting in June 2017.
- In addition, utilities will be required by regulation to include further OFHP inserts in bills once a quarter for one year.
- Below is a mockup of the potential June insert:



OFHP On-Bill Messaging – Authority Overview

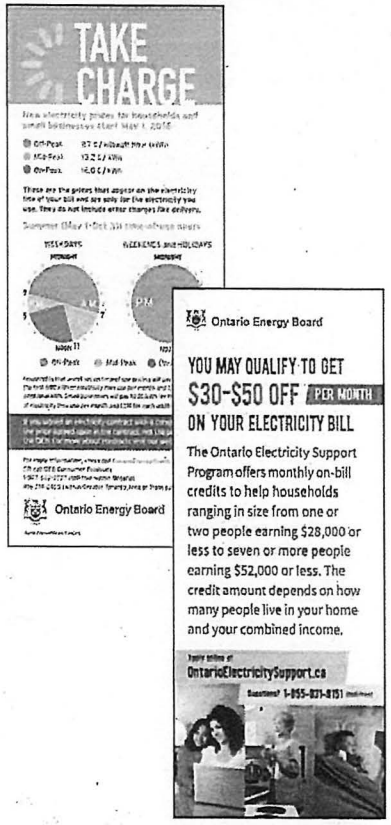
- In Ontario, most electricity customers receive bills for their consumption of electricity from their LDC.
- The government has the authority to stipulate requirements in relation to the form and content of electricity bills, including the ability to prescribe messaging related to government programs directly on bill invoices, inserts and envelopes.
- These requirements have been criticized as a patchwork of measures that limit the invoice's readability and usefulness to consumers. Customer advocates have called for more flexibility to design a more consumer-responsive invoice.
- The government obtains its authority to mandate specific content with respect to bills from the Ontario Energy Board Act, 1998, as well as a number of regulations, including:
  - **O. Reg. 275/04,** which requires bills to display specific line items, as well as a glossary of terms, consumption information and government messaging.
  - **O. Reg. 364/16,** which requires LDCs to include the 8% provincial rebate for consumers on bills, bill inserts and envelopes.
  - **O. Reg. 429/04,** which requires the GA to be disclosed on electricity bills for specified customers.
- The OEB has also established policies related to bill frequency and accuracy, which LDCs are required to follow.
- Hydro bill appearance varies widely across Ontario's approximately 70 LDCs.



OFHP On-Bill Messaging – Near Term Messaging

- To ensure LDCs can provide Ontario Fair Hydro Plan programs on-time, only minimal near-term messaging is possible.
- In the upcoming months, LDCs will provide the following messaging updates:

Date	Bill Messaging
May 2017	• LDCs required to provide an OEB bill insert indicating changes to Time-of-Use (TOU) pricing.
June 2017	• LDCs, where willing, to issue OFHP bill inserts ahead of finalized OFHP regulations. • Ministry will work with LDCs to provide messaging, artwork and translation of the June bill inserts.
July 2017	• OFHP regulations will be introduced in June 2017, which will require that as of July 1, 2017 LDCs provide: 1. General invoice messaging to explain the existence of the Ontario Fair Hydro Plan. 2. Bill insert explaining OFHP programs in greater detail using prescribed language.



Sample: OEB May 2016 TOU Bill Insert

OFHP Bill Insert – Design Options

- While some LDCs may begin providing inserts in June, all LDCs will be required by regulation to provide inserts beginning in July.
- Unlike the proposed June 2017 bill insert, LDCs would be required to comply with this second bill insert as per regulation.



Ontario's Fair Hydro Plan would lower electricity bills by 25 per cent, with rates also held to inflation for the next four years, for typical residential consumers. As many as half a million small businesses and farms would also benefit under the Plan. The benefit would vary for individual consumers depending on consumption and service territory. Lower-income Ontarians and those living in eligible rural communities would receive even greater reductions, as much as a 40 to 50 per cent cut. These measures include the eight per cent rebate introduced in January and builds on previous initiatives to deliver broad-based relief on all electricity bills.

To find out more, visit **Ontario.ca/FairHydroPlan.**

Ontario

Note: Graphic treatments are for discussion only

ONTARIO'S
FAIR HYDRO PLAN

Bringing electricity prices down

Ontario's Fair Hydro Plan would lower electricity bills by 25 per cent, with rates also held to inflation for the next four years, for typical residential consumers. As many as half a million small businesses and farms would also benefit under the Plan. The benefit would vary for individual consumers depending on consumption and service territory. Lower-income Ontarians and those living in eligible rural communities would receive even greater reductions, as much as a 40 to 50 per cent cut. These measures include the eight per cent rebate introduced in January and builds on previous initiatives to deliver broad-based relief on all electricity bills.

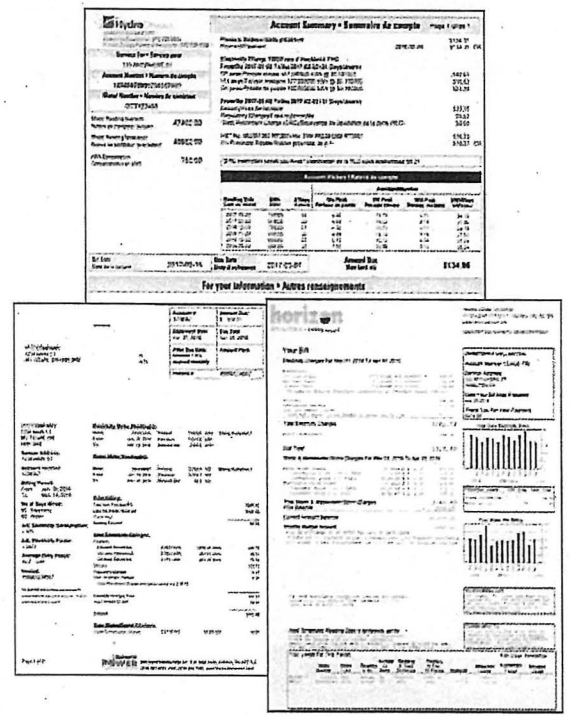
To find out more, visit **Ontario.ca/FairHydroPlan.**

Ontario

Ontario

Long-Term Messaging Improvements

- The Ministry believes there is opportunity for a consultation on the design of the bill, with a goal to refresh the regulatory framework to improve the value of the bill to the consumer across all LDCs.
  - Changes of this nature will require more in-depth consultation with LDCs, as well as broader regulatory amendments to simplify the requirements, necessitating a longer period to implement.
  - This refresh would also include opportunities to communicate OFHP savings in a more personalized and comprehensive manner.
- The Ministry proposes to convene with LDCs in July, once they've had sufficient time to make the backend changes necessary to implement the OFHP initiatives and general OFHP messaging, to discuss the changes they would like to see to bill presentment. We would also seek their feedback on how to improve the associated regulations.
- Consultation will also involve consumers, consumer advocates and other interested parties.
- Based on this feedback, the Ministry would aim to introduce regulatory amendments to simplify bill presentment in the Fall 2017.

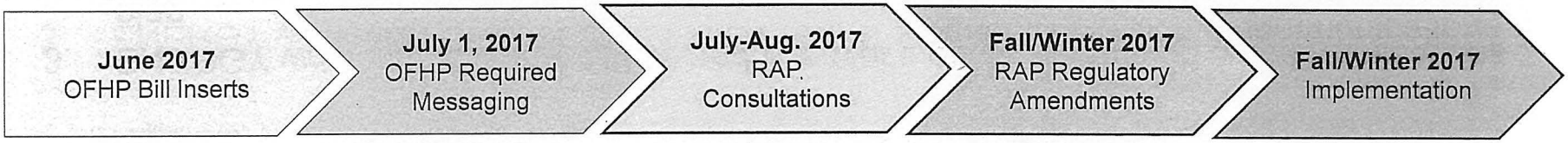


CONFIDENTIAL CABINET DOCUMENT

Ontario

OFHP On-Bill Messaging – Proposed Timeline

- The Ministry believes there is opportunity for redesign of the electricity bill this summer, with a goal to refresh the regulatory framework to improve the value of the bill to the consumer across all LDCs.



June 2017 – OFHP Bill Inserts

- LDCs to voluntarily issue OFHP bill inserts in late June ahead of finalized OFHP regulations.
- ENERGY to provide LDCs with sample bill insert messaging, artwork and translation (possibly hard copies).

July 1, 2017 – OFHP Required Messaging

- OFHP legislation and regulations to be introduced in June 2017, require LDCs to complete the following by July 1, 2017:

1. issue a second OFHP bill insert with prescribed messaging;
2. include standardized on-bill messaging; and
3. remove outdated line items and messaging (e.g., 8% provincial rebate).

July-Aug. 2017 – RAP Consultations

- ENERGY to convene with LDCs in July once OFHP initiatives have been implemented.
- ENERGY would seek feedback from LDCs on the changes they would like to see to bill presentment.
- Consultations would also involve consumer advocates and other interested parties.

Fall/Winter 2017 – RAP Regulatory Amendments

- ENERGY would aim to introduce regulatory amendments to simplify bill presentment in Fall 2017.

Fall/Winter 2017 – Implementation

- Regulatory amendments to become effective no later than January 1, 2018.

Ontario

Cabinet Minute

1. Cabinet approved the proposed *Fair Hydro Act, 2017* for introduction, subject to the following:

    i. The Office of Legislative Counsel is authorized to prepare a French version and to make minor adjustments to the English version, for the purpose of ensuring consistency between the two versions and making other improvements or correcting mistakes discovered in the translation process.

2. ENERGY to report back, pending Royal Assent, with regulation and associated regulatory amendments for approval.

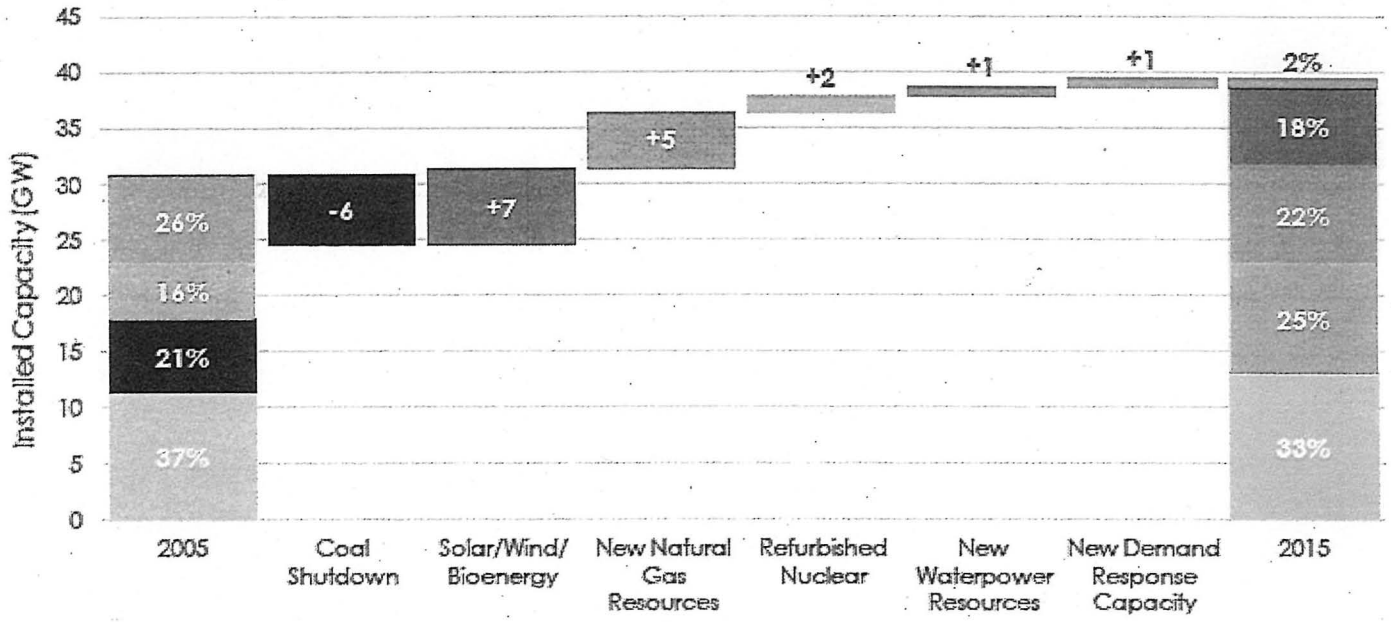
3. ENERGY work with Cabinet Office and Premier's office to develop a communications plan.

Ontario

Appendix

Infrastructure Investments

- Electricity costs are increasing as the necessary investments are made to decarbonize and modernize the province's electricity infrastructure. Since 2005, Ontario has invested more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable.



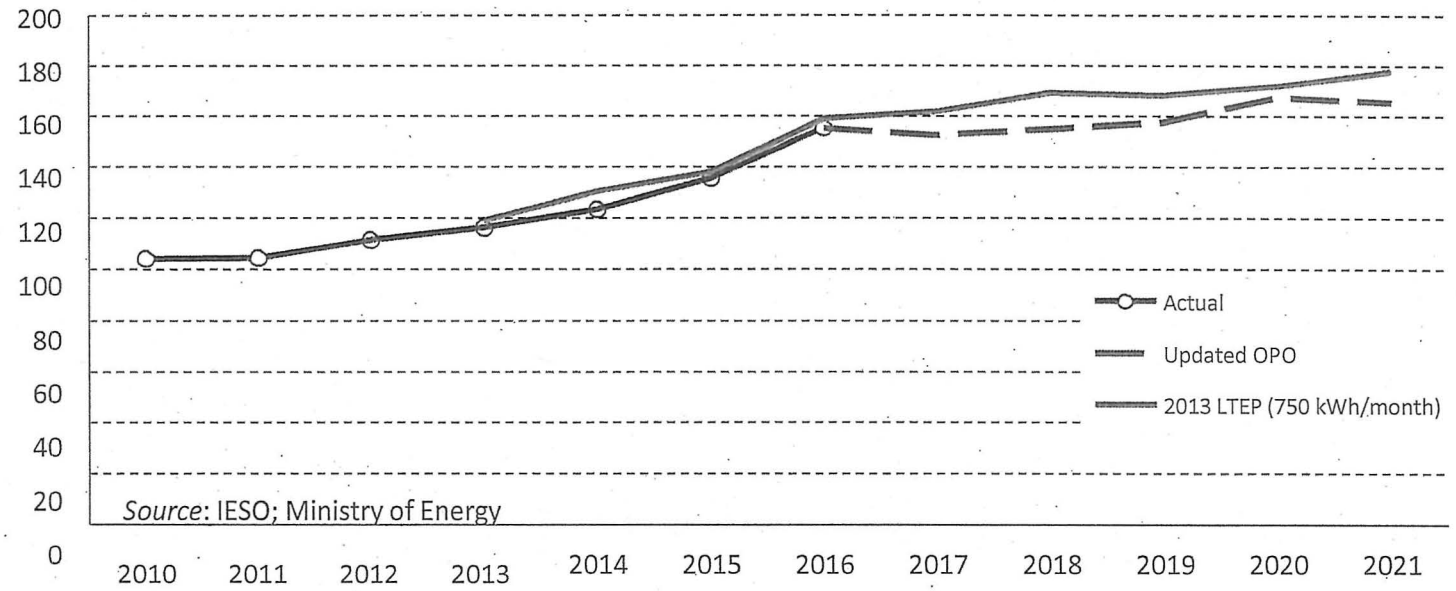
Source: IESO Ontario Planning Outlook

Electricity Prices Infrastructure Investments

- Electricity price increases have generally outpaced inflation. There have been several government policies that have impacted electricity prices over the past several years, including: HST, the Industrial Conservation Initiative (ICI), the Ontario Clean Energy Benefit (OCEB) and the Debt Retirement Charge (DRC).

- Following the 2016 Throne Speech, a number of actions were announced to further reduce electricity costs including an 8% electricity bill rebate for residential consumers.

Illustrative Typical Residential Electricity Bills
Historical and Forecast in $/month



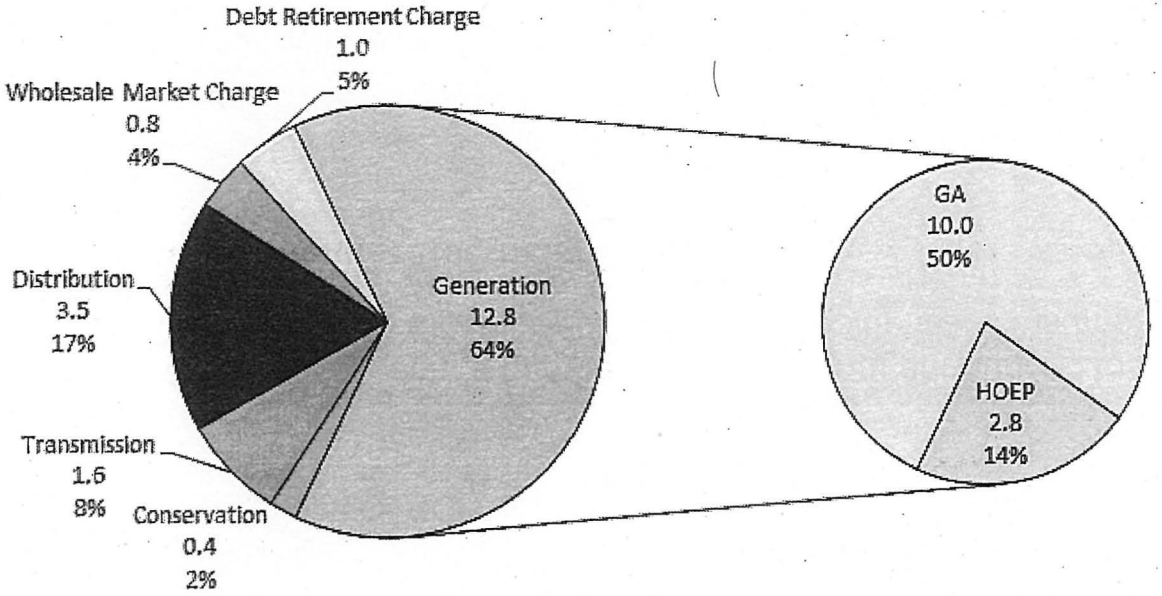
CONFIDENTIAL CABINET DOCUMENT

Global Adjustment

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.

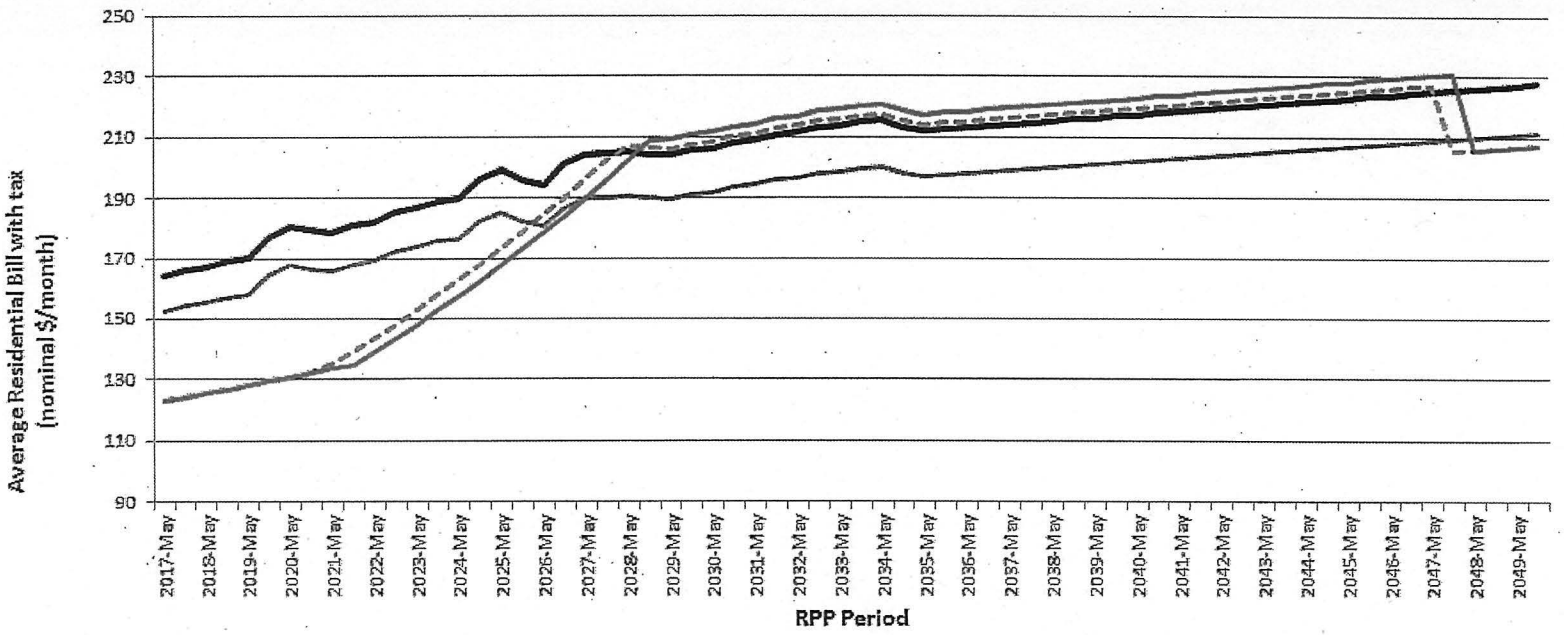
2015 Electricity System Cost

$ billion



***Source*:** IESO

GA Smoothing for RPP-Eligible Only (Borrow $2.5 billion in 2017, Residential Bills Lowered 25%)



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Average monthly bill with OFHP ($/month)	124	126	129	131	137	146	155	165	176	187	199	207	207	209	212	214	216	216	214	215	216	217	219	220	221	222	223	224	225	226	216	206
Year-over-year change (%)	n/a	2.01	2.01	2.01	4.25	6.44	6.44	6.44	6.44	6.44	6.44	3.61	0.08	1.20	1.29	1.14	0.93	-0.04	-0.88	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	-4.37	-4.61
Impact of GA financing and tax-basing ($/month)	-29.9	-30.0	-35.0	-34.4	-28.8	-24.0	-17.8	-14.2	-3.3	3.4	12.2	16.4	16.5	16.7	16.9	17.1	17.2	17.1	17.0	17.1	17.2	17.3	17.4	17.5	17.6	17.6	17.7	17.8	17.9	18.0	-3.9	-4.0
Total accumulated debt ($B)	2.5	5.2	8.2	11.6	14.7	17.5	19.9	22.0	23.5	24.1	24.2	23.7	23.1	22.5	21.8	21.0	20.1	19.2	18.3	17.2	16.1	14.9	13.7	12.3	10.9	9.3	7.7	5.9	4.1	2.1	0.0	0.0
Total change in accumulated debt ($B)	2.5	2.6	3.0	3.5	3.1	2.8	2.4	2.0	1.6	0.6	0.1	-0.5	-0.6	-0.6	-0.7	-0.8	-0.8	-0.9	-1.0	-1.0	-1.1	-1.2	-1.3	-1.4	-1.4	-1.5	-1.6	-1.7	-1.9	-2.0	-2.1	0.0

Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2020 such that the average monthly residential electricity bill increases by 6.3% per year to a maximum of $2.2 billion above the true cost of GA in any given year to cap repayment charges at around 10% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Data shown above is by RPP period. Assumes RPP prices are adjusted in July 2021 instead of May 2021 to coincide with the end of the inflation cap. Fair allocation amounts subject to third party review.

Delivery and Distribution Charge – Background

- The **Delivery** line on a typical consumer bill is specific to a consumer's Local Distribution Company (LDCs) and accounts for roughly 25-35% of the total bill before taxes.
- Delivery covers the costs of getting electricity from generating stations across the province to homes and businesses and combines three cost components of the electricity sector into one line item charge:
  - **Transmission:** The costs of moving electricity across high voltage lines from generating stations to the distribution system. This cost is recovered through a variable charge that is approved by the OEB.
  - **Distribution:** The costs of moving electricity from the transmission system to homes and businesses. Depending on the LDC, distribution costs makes up about 60% to 80% of the Delivery line.
    - This cost is currently recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates are moving to a fully-fixed charge over next 5 years.
  - **Line Loss:** The costs to recover electricity that is lost as heat when its delivered over a power line. Each LDC is assigned by the OEB a specific line-loss adjustment factor to reflect their loses particular to their assets. This factor is multiplied against the monthly electricity cost to determine the monthly cost.

SAMPLE MONTHLY BILL STATEMENT

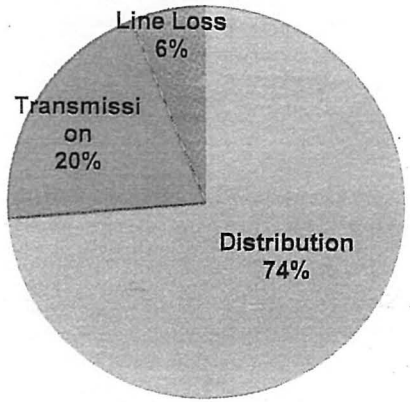
Anytown Hydro-Electric Limited

Account Number:
000 000 000 000 0000

Meter Number:
00000000

Your Electricity Charges	
Electricity	
Off-Peak @ 8.700 ¢/kWh	41.20
Mid-Peak @ 13.200 ¢/kWh	16.35
On-Peak @ 18.00 ¢/kWh	23.60
Delivery	53.07
Regulatory Charges	4.79
Debt Retirement Charge	0.00
Total Electricity Charges	**$139.00**
HST	18.07
8% Provincial Rebate	(11.12)
Total Amount	**$145.95**

Cost breakdown of Delivery Line for an Average Residential Bill*



* Toronto Hydro Bill @ 750kWhs

CONFIDENTIAL CABINET DOCUMENT

Ontario

Appendix: See Ministry of Energy's Implementation of Ontario's Fair Plan – Appendix

Ontario

Implementation of Ontario's Fair Hydro Plan – Appendix

Ministry of Energy

May 10, 2017

KPMG Memo

Ontario

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to the Proposed *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017

CONFIDENTIAL CABINET DOCUMENT

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the proposed *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

KPMG in no way accepts any duty of care to you or any other person or accepts any agreement or other arrangement of a contractually binding nature between our firm and such parties.

KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party, unless disclosure is required by law or to fulfill a professional obligation required under applicable professional standards.

Yours very truly,

KPMG LLP

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

May 4, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the proposed *Ontario Fair Hydro Plan Act, 2017* ("the proposed Act") (Appendix A, Version 6, to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of the proposed Act (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several weeks. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on the proposed Act and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by the proposed Act?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

CONFIDENTIAL CABINET DOCUMENT

KPMG

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for Issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an Other Governmental Organization and accordingly prepares its financial statements in accordance with PSAS.
2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.
3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies*, audited by KPMG: "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."
4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."
5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),
   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and
   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.
6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.
7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of the proposed Act*:

   Section 1xx Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 22xx (3):

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 20.1xx Variance account to be established

(1) IESO shall establish and maintain a variance account for the purposes of this section.

(2) IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences after May 1, 2017 and before the day this section comes into force

(3) Subject to the correction of any obvious error by IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Section 21xx Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Section 30.1xx Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the funding shortfall recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (ie a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO funding shortfall for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

- For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]



- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- A cost arising from cash paid out or obligation to pay for an acquired asset or service...a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

CONFIDENTIAL CABINET DOCUMENT

Ontario



A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by the proposed Act?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by the proposed Act. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of the proposed Act is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. The proposed Act will not permit IESO to collect the funding shortfall before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

CONFIDENTIAL CABINET DOCUMENT

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	The proposed Act states that; • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on the proposed Act, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

KPMG

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as government business enterprises and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	Frequency of rate case
	- Currently, IESO is subject to OEB's annual reviews
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the funding shortfall recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account of the balance is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance
		Met

CONFIDENTIAL CABINET DOCUMENT

KPMG

Criteria	Comment	Evaluation
	recorded in the variance account. - *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording in the variance account of the balance in the variance account is determinative of the balance as of the time of recording (We note that this confirms that there will be no prudence review).* - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the funding shortfall recorded in the variance account, including the first four-year period. - *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.*	

Ontario

CONFIDENTIAL CABINET DOCUMENT

KPMG

Criteria	Comment	Evaluation
	Costs uncertainty As the IESO will be granted the right to fully recover the funding shortfall recorded in the variance account, there is no uncertainty about the recovery of the costs. *Disallowances of costs* The OEB has never disallowed the recovery of any material costs incurred by IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the funding shortfall recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	The proposed Act notes that:
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  - *The Board shall, from time to time, determine and set rates payable by specified customers to allow for IESO to recover the balance recorded in the variance account.*
	  - *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will
		Met

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

Criteria	Comment	Evaluation
	need to be continually evaluated throughout the recovery period.	

Management conclusion:

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the proposed Act based on the foregoing analysis.

The variance account created by the proposed Act is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulated asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 *Generally Accepted Accounting Principles* allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations in its accounting policies.

Our conclusion:

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by the proposed Act will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with the proposed Act, it is proposed that a trust to be created as a financial vehicle by OPG in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

Appropriate Accounting Principle for issue #2

PS1300 *Government Reporting Entity*

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added)
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

CONFIDENTIAL CABINET DOCUMENT

Ontario



- For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity*. Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on the proposed Act, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- The proposed Act states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 13xx)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 14xx (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees to recover the costs of doing anything the*	No

KPMG

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	Financial Services Manager is required or permitted to do under this or any other Act; and any other type of expenditure, the recovery of which is permitted by the regulations. (Section 14xx (3)) - The Electricity Act, 1998 (EA) will be amended as follows: - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services." (Section 53.1 (1.1))* - *"OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects." (Section 53.1 (1.2))* - QPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees. - The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	
Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 23xx of the proposed Act states: - *A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for*	No

CONFIDENTIAL CABINET DOCUMENT

KPMG

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest. - *At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on the proposed Act, *upon transfer by IESO of a portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 24xx (1.1)) - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on the proposed Act.	No
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- The proposed Act states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 13xx)* - *"The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing a funding obligation." (Section 16 (1))* - OPG is the Financial Services Manager, not IESO. - IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.	No
Establish borrowing or investment limits or restrict the organization's investments	- Section 17 of the proposed Act states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes*	No

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	of this Act are incurred in a manner that is consistent with the applicable Financing Plan. - OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees	No

Management Conclusion:

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our Conclusion:

We have considered the foregoing analysis and management's conclusion. We concur that based on the Proposed Act, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under the proposed Act and hence would not consolidate the OPG Trust.

The adoption of the proposed Act (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several weeks. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of the proposed Act or review of the final regulations, financing structure and other agreements.

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

Background for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO funding shortfall for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from the proposed Act:*

   Section 11xx IESO to receive amounts

   (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998.*

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referred to in subsection (2), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 12xx Pro rating of payments

   (3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 22xx Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

CONFIDENTIAL CABINET DOCUMENT

KPMG

(3) Upon receipt by the IESO of the payment by the financing entity.

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 23xx Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 25xx Investment asset established

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 26xx Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 28xx Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Ontario

KPMG

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis;

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of the proposed Act.

Appropriate Accounting Principle for issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(e) Deregulation

(f) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(g) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(h) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts:*

- This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]
- Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]
- An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:
  (a) no future economic benefit;
  (b) future economic benefit, but the government cannot obtain it; or
  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions*[1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. | Early adoption is permitted.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSASs provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions*, which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities:

- Paragraph 21 states that individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.
- As stated in paragraph 24, when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36) Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor."* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest."* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on the proposed Act, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO funding shortfall to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Ontario

CONFIDENTIAL CABINET DOCUMENT

KPMG

Management conclusion:

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the variance account to the OPG Trust.

The transfer of the variance account transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before June 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
(416) 777 8414
mpicard@kpmg.ca

CONFIDENTIAL CABINET DOCUMENT

Ontario

KPMG Memo

Ontario

Appendix A:

Draft of the Ontario Fair Hydro Plan Act, 2017

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 6

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Ontario Fair Hydro Plan Act, 2017, if enacted

CONFIDENTIAL CABINET DOCUMENT

A proposal to create Legislation.

Ontario Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Confidential Draft

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

CONTENTS

PART I
GENERAL

1. Interpretation
2. Effect of invalidity, etc
3. Purpose

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

KPMG Memo
CONFIDENTIAL CABINET DOCUMENT
Ontario

1 Crown bound
2 Protection and assurances

PART II
FAIR ADJUSTMENT

6 Definitions
6.1 Regulated rate consumer, first adjustments
6.2 Other specified consumers, first adjustment
6.3 Determination by Board
6.4 Implementation of rates
7 Subsequent adjustments
7.1 Sub-metering

PART III
CLEAN ENERGY ADJUSTMENT

8 Specified consumers to pay
9 Irrevocability of amount
10 Determination of clean energy adjustment
11 IESO to receive amounts
12 Electricity vendor to invoice specified consumers

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

13 Appointment
14 Duties and powers

FAIR ALLOCATION AMOUNT

15 Minister to calculate fair allocation amount

FINANCING PLAN

16 Financial Services Manager to prepare Financing Plan
17 Implementation of Financing Plan

PART V
THE REGULATORY ASSET

20 IESO deferral
20.1 Variance account to be established, maintained
21 Regulatory asset established
22 Transfer of regulatory asset
23 Validity of transfer

PART VI
THE INVESTMENT ASSET

24 Effect of transfer
25 Investment asset established
26 Transfer of investment interest
27 Validity of transfer
28 Investment interest owner may grant security interest

PART VII
MISCELLANEOUS

29 Appointment of agent, invoicing or collection
30 Not Crown agent
30.1 Board's authority
31 Sequestration
32 Choice of law
33 Conflict
34 No further approvals, etc.
35 Liability
36 References in marketing materials and offering documents
38 Regulations

PART VIII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

PART IX
COMMENCEMENT AND SHORT TITLE

103 Commencement
101 Short title

Confidential Draft

Confidential – Draft for discussion purposes only

CONFIDENTIAL CABINET DOCUMENT

Ontario

PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx and payable by specified consumers; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

Confidential Draft

KPMG Memo
CONFIDENTIAL CABINET DOCUMENT
Ontario

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means an amount calculated under section 15xx; ("French")

"finance amount" means the finance amount determined in accordance with the regulations; ("French")

"financing entity" means an entity established or caused to be established as described in subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means a plan prepared under section 16xx; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

Confidential – Draft for discussion purposes only

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

Ontario

"funding rebate" means a payment obligation incurred by IESO as part of the transfer of the regulatory asset; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO deferral" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 25xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of the *Electricity Act, 1998*; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047 or ending on such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("French")

"true up amount" means a true up amount determined in accordance with the regulations; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by IESO under subsection 20.1xx (1). ("French")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 22xx (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definitions

6xx. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. ("French")

Regulated rate consumer, first adjustments

6.1xx (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve the following outcome: a fictional regulated rate consumer who meets the prescribed criteria would be charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) Each invoice amount mentioned in subsection (1) shall be determined in accordance with the regulations.

Other specified consumers, first adjustment

6.2xx (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

6.3xx The Board shall make the determinations mentioned in sections 6.1xx and 6.2xx no later than fifteen business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

6.4xx (1) As soon as possible after the Board makes determinations under section 6.3xx, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 6.3xx, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Subsequent adjustments

7xx. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for specified consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers.

Limitation

(2) Any prescribed methodology to be applied in respect of a period after June 30, 2021 shall have regard to the following:

1. The fair allocation amount in respect of the period.
2. Any clean energy adjustments payable in respect of the period.
3. Such other matters as may be prescribed.

Sub-metering

7.1xx (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 6.3xx or section 7xx applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

Confidential Draft

KPMG Memo
CONFIDENTIAL CABINET DOCUMENT
Ontario

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:
    i. The estimated finance amount in respect of the reference period.
    ii. The true up amount in respect of the reference period.
2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(3) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.
2. The method for determining the true up amount should take into account historical and reasonably foreseeable,
    i. differences between the estimated and actual finance amount for the applicable reference period,
    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and
    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

Board to determine rates

(5) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).
2. Payments made by specified consumers directly to IESO as electricity vendor under subsection 8xx (1).
3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(4) All amounts received by IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners, be received and held in trust by IESO for the investment interest owners.

IESO to remit

(5) IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referred to in subsection (2), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (5) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to IESO the total amount invoiced to its specified consumers in respect of the clean

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Confidential Draft

KPMG Memo
Ontario
CONFIDENTIAL CABINET DOCUMENT
42

Same

(2) The administration of the investment asset may include providing information to IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees, etc.

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of rates determined under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 10xx or any funding obligations that have already been incurred before the change.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Information

(7) The Minister, IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation

(4) In respect of each reference period from May 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Same

(2) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

20xx. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by IESO in accordance with the regulations.

Same, retrospective amounts

(1.1) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by IESO on or after May 1, 2017 and before the day this Act comes into force.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) IESO shall record the following in the variance account:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Confidential Draft

Confidential – Draft for discussion purposes only

CONFIDENTIAL CABINET DOCUMENT

Recording determinative

(3) Subject to the correction of any obvious error by IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

21xx. (1) Effective May 1, 2017, IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Limitation

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by IESO of the payment by the financing entity,

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

23xx. (1) A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The transfer of a specified portion of the regulatory asset under section 22x creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Confidential Draft

KPMG Memo
Ontario
CONFIDENTIAL CABINET DOCUMENT

Same

(1.1) Upon transfer of a specified portion of the regulatory asset under section 22xx to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Confidential – Draft for discussion purposes only

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owners to collect and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

Confidential – Draft for discussion purposes only

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

Confidential – Draft for discussion purposes only

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, a person appointed under section 29xx is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

30.1xx (1) Each electricity vendor, IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5XX shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

35xx. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

Ontario

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Regulations

38xx. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [5]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Prescribing types of payment obligations that constitute funding obligations.

4. Governing the determination of classes of specified consumers, which may include determination based on the manner in which rates are determined for different classes of specified consumers.

5. Governing the determination of the finance amount and the true-up amount and how those amounts are to be applied to the clean energy adjustment.

6. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the

[5] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

form of the invoices and the form of any notice to be provided to the specified consumer under this Act[6];

8. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

9. Governing the Financial Services Manager's power to establish and charge fees, including the ability to recover costs and expenditures and to earn a return.

9.1 Providing for a right of compensation for investment interest owners affected by a breach of section 25xx and the manner in which such a right may be enforced under this Act.

10. Prescribing the time within which any action required by this Act may be required to be done.

11. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII[7]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[6] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[7] FLS. These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

CONFIDENTIAL CABINET DOCUMENT

Ontario

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 22x for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(1.1) Subsection 25.33 (2) of the Act would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (3) of the Act would be amended by adding the following paragraph:

4. A consumer who is a specified consumer within the meaning of the *Ontario Fair Hydro Plan Act, 2017* or such other consumer as may be prescribed.

(3) Clause 25.33 (4) (b) of the Act would be amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

(4) Subsection 25.33 (5) of the Act would be amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and,

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Confidential – Draft for discussion purposes only

Confidential Draft

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

205x. Subsection 70 (2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

205.1x Section 70 of the Act would be amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

Confidential Draft

KPMG Memo
CONFIDENTIAL CABINET DOCUMENT
Ontario
59

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Subsection 79.16 (3) of the Act would be repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

CONFIDENTIAL CABINET DOCUMENT

KPMG Memo

Ontario

CONFIDENTIAL CABINET DOCUMENT



Ernst & Young
[illegible]
[illegible]
[illegible]

The Special Committee of the Board of Directors
Ontario Power Generation Inc. (the "Company")
700 University Avenue
Toronto, ON M5G 1X6

May 5 2017

Dear Sirs/Madames:

This letter is being issued to the Special Committee to assist them in their evaluation of management's analysis of the application of International Financial Reporting Standards ("IFRS") as adopted by the International Accounting Standards Board ("IASB")) to the specific transaction described in the Company's memorandum entitled *OPG Accounting Considerations of Ontario Fair Hydro* dated May 2 2017, herein referred to as "the Management Memorandum". We are issuing this letter in our role as auditors of the Company for the year ending December 31, 2017. As the Province consolidates OPG on an IFRS basis, this letter pertains solely to management's IFRS analysis as contained in the Management Memorandum.

We have read the Management Memorandum and we agree with management's analysis therein, subject to all of the assumptions and limitations identified therein. Specifically, we concur that the existing in draft legislation, along with the yet undrafted Regulation and special purpose vehicle (TRUST) documents, and various other agreements assuming they include the required criteria that Management has identified as outstanding in its Appendix A, would be sufficient to support consolidation of the TRUST with OPG Inc.

Additionally, we specifically refer you to the section entitled "Conclusion" in the Management Memorandum, which indicates that their analysis is based on draft legislation as well as their assumptions regarding the terms and conditions of certain contractual arrangements and other documentary evidence that is not yet drafted. Therefore, the Management Memorandum will be required to be updated to reflect the final contents of the legislation and other relevant contractual arrangements and documentary evidence. We will review the updated Management Memorandum once it is available, and update you on our viewpoints once our review of such updated Management Memorandum is completed.

The scope of this letter and any views expressed herein are limited to the transactions, facts, circumstances and assumptions provided to us by management or the Company as described in the Management Memorandum. If such facts, circumstances or assumptions differ, our conclusions may change.

We have not performed an audit or a review of the Management Memorandum. Additionally, we have not performed an audit as of any date or for any period subsequent to December 31, 2016.

The ultimate responsibility for the proper accounting treatment under IFRS and US GAAP rests with the Company.

We have not been asked for, nor do we express, an opinion on the tax consequences of the transactions described herein.

The accounting for such transactions could be affected by actions of the International Accounting Standards Board, the IFRS Interpretations Committee, the Ontario Securities Commission, or other regulatory bodies. Any such actions occurring prior to the finalization of the 2017 IFRS consolidated financial information will be required to be analyzed by management and such analysis will be reviewed by us in the context of the audit procedures we will perform on the consolidated IFRS financial information for the year ending December 31, 2017.

Our work does not include the provision of legal advice and we make no representations regarding questions of legal interpretation of any possible structure or strategy. We make no representation regarding the sufficiency of our work for any purpose.

This report is intended solely for the information and use of the Special Committee, Board of Directors and management. We understand that a copy of this letter may be provided to the Province of Ontario, the Independent Electricity System Operator, and/or the Ontario Energy Board. It is not intended to be, and should not be, used by anyone other than these specified parties.

This analysis, or portions thereof, should not be referred to or distributed to any other person or entity, other than those noted in the paragraph directly above. It is not to be referred to or quoted, in whole or in part, in any registration statement, prospectus, public filing, loan agreement, or other agreement or document.

Yours sincerely

Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants

Tracy E Brennan
Partner
416-943-2615

CONFIDENTIAL CABINET DOCUMENT

Ontario

OPG Memo

CONFIDENTIAL CABINET DOCUMENT

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

May 2, 2017

ONTARIOPOWER GENERATION

OPG ACCOUNTING CONSIDERATIONS OF ONTARIO FAIR HYDRO PLAN

Purpose:

The purpose of this document is to summarize the preliminary views of Ontario Power Generation (OPG) on the ability for OPG to consolidate the Financing Entity Trust associated with the Ontario Fair Hydro Plan.

This memo is assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. Note that this assessment is preliminary pending the finalization of the Legislation, the Trust indentures, Regulations, financing structure and other detailed terms, and all related documentary evidence. This assessment will be updated once final documentation is available.

Background:

On March 2, 2017, the Province of Ontario (the Province) announced Ontario's Fair Hydro Plan (the Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Plan, the Province has proposed financing a portion of the Global Adjustment costs over a longer time period for Regulated Price Plan eligible customers (e.g., residential, farm, small businesses)

On April 13th, the Province requested that OPG consider administering the financing associated with the Plan, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the related financing activities. To undertake this financing, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements.

Assumptions made to perform accounting analysis which are not yet addressed in Legislation – it is expected that these matters will be addressed in Regulations, Trust documents, and various other agreements:

- The Regulation must require interest, carrying and administrative costs to be paid to the Trust in cash on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
- The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns
- The Minister of Energy will have the ability to replace the Financial Services Manger (OPG) if there is a failure to perform. There will be a bifurcation of roles where the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward. The ability for the Minister of Energy to remove OPG as the Financial Services Manager should not impact the recoverability of existing intangible assets

Ontario

- The calculation of the Fair Allocation Amount will be performed by the Minister of Energy.
- OPG has the ability to appoint and remove the Trustee (or Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust.
- Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error.
- The margin on the interest rates associated with Tranche B and Tranche C which will be recovered from the ratepayers will be reflective of the risk profile of the debt and the associated market terms.
- The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.
- The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same. Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.
- In the event that a different Financial Services Manager is appointed by the Minister of Energy, the IESO is required to continue to make cash payments for interest to the Trust for the existing debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.
- All other items as indicated in *Appendix A*.

Accounting Analysis:

In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the Trust, or whether it has the ability to affect the returns of the Trust through its power over the Trust. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity.

In order to consolidate the Trust, OPG must be able to demonstrate that it controls the Trust.

Control

An investor controls an investee if and only if the investor has all the following:

a) *power over the investee;*
b) *exposure, or rights, to variable returns from its involvement with the investee; and*
c) *the ability to use its power over the investee to affect the amount of the investor's returns.* [IFRS 10, paragraph 7]

Purpose and design of the investee

'When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities. [IFRS 10, paragraph B5]

Criteria	Analysis
Purpose and design of the Trust	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees.

OPG Memo
CONFIDENTIAL CABINET DOCUMENT
Ontario
62

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

Purpose and design of the investee
When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities. [IFRS 10, paragraph B5].

Relevant activities of the Trust and how decisions are made about those activities	<u>Relevant activities:</u> The relevant activities of the Trust are: • To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs. • To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing • To provide funding to the IESO in return for an interest in a future cash flow stream • To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding • To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation • To finance the requirements associated with the short-fall amount • To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing <u>Financing Plan (Legislation: Part IV – Implementation)</u> • OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan' • The Financial Services Manager (i.e. the Trust) shall provide the Financing Plan to the Minister. The Financing Plan is expected to follow Principles as stipulated in the Legislation which indicate that the assumptions must be reasonable and that the Trust has the power to determine what is reasonable and cost-effective. The Trust makes all the decisions in determining the relevant activities as listed above. • OPG can amend the Financing Plan at any time without the approval of the Minister. <u>Fair Allocation Amount (Legislation: Part IV – Implementation)</u> • The 'Fair Allocation Amount' ("FAA") is the amount of the deferral for the reference period and includes finance amounts. The current Legislation dictates that the Minister of Energy is to calculate the FAA. • This does not impact OPG's relevant activities in the Trust as OPG's variable returns are based on financing decisions which are not dictated by the FAA. OPG can choose to accept or reject the purchase of the intangible asset which is based on the Fair Allocation Amount.

CONFIDENTIAL CABINET DOCUMENT

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

Purpose and design of the investee *"When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities" [IFRS 10, paragraph B5]*	
	Decisions made and voting rights of the Trust: OPG has the ability to appoint and remove the Trustee (and if applicable Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust. **[NOT YET ADDRESSED IN CURRENT LEGISLATION]** *Voting of members* Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG. Termination Rights OPG cannot be removed from its role in the Trust. The Province has the right to remove OPG as the 'Financial Services Manager' for failure to perform. This will not impact debt that has already been issued for which OPG is already managing through the Trust or the recoverability of existing intangible assets. If the right is exercised, it serves to reduce or eliminate the scope of new business activities of the Trust but it does not affect OPG's ability to control the Trust. Should a new Financial Services Manager be appointed, a separate assessment would be made as to which party if any would control it.
Assessment	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities.

Power over the investee	
Criteria	Analysis
Identify whether OPG's rights give it the current ability to direct the relevant activities of the Trust (Substantive rights)	See above for relevant activities of the Trust.
Assessment	OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV.

CONFIDENTIAL CABINET DOCUMENT

Exposure or rights to variable returns	
Criteria	Analysis
Dividends, other distributions of economic benefits from an investee and changes in the value of the investor's investment in that investee (IFRS 10, paragraph B57(a))	OPG is expected to realize management fees from its activities with the Trust.
Remuneration for servicing an investee's assets or liabilities, fees and exposure to loss from providing credit or liquidity support, residual interests in the investee's assets and liabilities on liquidation of that investee, tax benefits, and access to future liquidity that an investor has from its involvement with an investee (IFRS 10, paragraph B57(b))	**[NOT YET ADDRESSED IN CURRENT LEGISLATION]** OPG has exposure and rights to variable returns from the Trust in the form of the following: • The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. • OPG, through ownership of the most subordinated debt, is exposed to risk of non-collection. Given that the program is expected to run until 2047, this 30 year time period results in uncertainty about the future collection of OPG's amount at risk. OPG and the OFA (5% out of 44% contribution) would be the last parties to get paid in the event that the program stops running due to a change in Government, if electricity demand is not high enough to allow for collection from ratepayers in a timely manner, etc. The end date of 2047 that is prescribed in the Legislation results in uncertainty toward whether this program will continue and whether OPG will have collected its amount at risk at that time. • In the event that there is a market disruption whereby OPG is not able to obtain debt from the financial markets (e.g. due to a recession), the Province will provide funding in the event that OPG wishes to continue purchasing intangible assets from the IESO. This is considered to be a protective right as it does not impact the relevant activities of the Trust, but is designed to protect both parties and does not give either party more or less power over the Trust. It is designed to allow OPG to keep purchasing intangible assets if it wishes to. • Protective rights are typically held to prohibit fundamental changes in the activities of an investee that the holder does not agree with and usually apply only in exceptional circumstances (i.e., upon a contingent event). This is true for this right as it is only applicable if there is a market disruption and the Trust is not able to obtain financing from external markets. Further, the fundamental activities of the Trust would change if it were not able to obtain financing from external markets.
Returns that are not available to	• OPG will have synergistic benefits from combining operating

CONFIDENTIAL CABINET DOCUMENT

Exposure or rights to variable returns	
other interest holders. For example, an investor might use its assets in combination with the assets of the investee, such as combining operating functions to achieve economies of scale, cost savings, sourcing scarce products, gaining access to proprietary knowledge or limiting some operations or assets, to enhance the value of the investor's other assets. [IFRS 10, paragraph B57 (c)]	functions with the Trust given its extensive knowledge on the market and current regulatory knowledge.
Assessment	To determine which party is the most 'at risk' in the event that the loans default, expected loss rates were obtained from Moody's and DBRS. Using the *Moody's Investors Service – Loss Given Default for Speculative Grade Companies* dated December 4, 2015, the 4-year Idealized Expected Loss ranges from 0.00% for a triple A rated bond to 0.30% for an A3 rated bond. DBRS Expected Loss Ratings give an indication of the expected loss of a loan portfolio. As per a November 2016 publication, the 10-year expected loss rates range from 0.1% for a AAA rated bond to 1.7% for an A (low) rated bond. Given that OPG's subordinated debt is equal to 5% of the total debt, which is higher than the default rates above, 100% of the risk is with both OPG and the OFA since they are the last parties to get paid should there be any default with the debt. OPG is also exposed to variable returns from the Trust from its performance on decisions made on financing alternatives, duration, and the strategy to minimize financing costs through the variable fee component of the management fee. Therefore, OPG has the exposure to variable returns from the Trust.

Ability to use power to affect returns	
Criteria	Analysis
Ability of investor to use its power to affect the investor's returns from its involvement with the investee	OPG needs to have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust OPG has the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component.

CONFIDENTIAL CABINET DOCUMENT

Ability to use power to affect returns	
	Further, the Trust's ability to use its power to affect returns is in a manner that is consistent with being a principal. See *Appendix B* for Principal-Agent analysis.
Assessment	OPG has the ability to use its power to affect returns of the Trust.

Conclusion:

Based on the current **[May 1, 2017]** draft of the legislation, the conditions to ensure the ability of OPG to consolidate the operations of the Trust have not fully been reflected. As noted in Appendix A, several conditions must be evident in the Regulations, Trust documents, and various other agreements which are not yet drafted and therefore not yet available for our review and assessment. In OPG's assessment, while no current clause of the Legislation would hamper the ability to effect a consolidation within OPG Inc.'s financial statements, there are several key conditions for consolidation that are currently not present within the Legislation. On the assumption that future Regulations, Trust documents and various other agreements fully capture these operating conditions, and that no new conditions that would conflict with OPG's control of the trust are introduced, OPG believes that consolidation of the Trust is supportable.

CONFIDENTIAL CABINET DOCUMENT

APPENDIX A:

Terms necessary for OPG to consolidate the Global Adjustment Trust

Note that these are assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. These are subject to change as subsequent drafts of the Legislation are issued.

Legend:

✓ - Addressed by the Legislation drafted May 1, 2017

RT – Not addressed by Legislation and must be addressed in Regulations, Trust Documentation or various other agreements

Ω - Will not be addressed in Legislation/Regulations or Trust but is the intended plan

Issue	No.	Requirements
Directive	1 ✓	The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise ***MET - The Province will not direct OPG to participate in the Fair Hydro Plan. A letter was issued from the Minister of Energy to OPG on April 13th requesting OPG's involvement in the implementation of the Fair Hydro Plan. OPG's Board Chair responded to the Minister on April 18th committing OPG to work with the IESO and OEB to develop a plan. OPG will have the option to prepare, implement and amend a financing plan (in accordance with principles set out in legislation) and propose the adoption of such plan as the 'Financing Plan'. OPG will have the right to withdraw its financing plan at any time.***
Trust	2 RT	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot'). ***OPG will be the sole unit holder of the Trust. All decisions over the relevant activities of the Trust (as described above) will be made by OPG.***
	3 RT	OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the Trust ***OPG will be the sole unit holder of the Trust. The Province will be involved in the Board of Trustees, but OPG is expected to have the majority vote.***

CONFIDENTIAL CABINET DOCUMENT

Issue	No.	Requirements
	4 RT	The Province cannot have the right to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust. ***OPG will have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG will have the power to establish operating and capital budgets of the Trust with no veto right by the Province.***
	5 RT	OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns. ***The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.***
	6 Ω	The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following: a. The Trust b. The most subordinated debt of the Trust ***See below for financing structure.***
	7 Ω	OPG must own at least 50% of the most subordinated debt and must be no less than 5% of the debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources ***See chart in Point 6 above.***

	Risk Profile	Source	% of Total Fundin Requirement
Tranche A Senior Debt	the least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt	the most risky	OPG via OEFC OPG via Capital Markets	5% 5%

CONFIDENTIAL CABINET DOCUMENT

Issue	No.	Requirements
	8 RT	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:
		a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks ***The cash flow from the restructured asset will include interest income that is equal to the interest expense (i.e. interest expense is passed back to the ratepayers). The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.***
	✓	b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset ***OPG will determine the financing strategy through the proposal of its 'Financing Plan'. The 'Financing Plan' will only be required to follow general Parameters and Principles as set forth in the Legislation but funding decisions will be made entirely by OPG. The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.***
	Ω	c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity. ***OPG's portion of the most subordinated debt will be limited to a reasonable level. If it is determined that OPG's portion is not at a reasonable level, OPG has the option to withdraw its Financing Plan.***
	RT	c. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.

CONFIDENTIAL CABINET DOCUMENT

Issue	No.	Requirements
		OPG will be able to capture the pricing difference between cost of financing and benchmark for interest through the performance fee which is described in point 5) above and the 'Exposure or rights to variable returns' section above.
	Ω d	OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive. ***OPG will be involved in the Trust documentation.***
	RT	Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), OFA may provide bridge financing beyond the designated percentage for a defined period ***This will be structured through a separate indemnification agreement. This is not expected to impact consolidation of the Trust because this is seen as a protective right which is only in affect when a contingency arises and not as a result of the relevant activities of the Trust.***
Legislation	9 ✓	The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs ***Under Part III – Clean Energy Adjustment – Section 8.3 Terms, of the Legislation, the expectation is that the Legislation will allow for interest payments to be paid to the Trust on a monthly basis in cash. The Trust will not accrue interest to the current intangible asset balances but this interest amount could form part of future intangible assets that are purchased from the IESO.***
	10 RT	The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee. **The Regulations are expected to dictate the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:** • **25% Reduction (June 1, 2017) where the average bill will**

CONFIDENTIAL CABINET DOCUMENT

Issue	No.	Requirements
		reduce by 25% including of HST and social programs noted above • Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation • Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity. • Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers. OPG will determine the manner in which the intangible asset, once purchased from the IESO will be collected and the period of collection. The recoverability of the existing intangible assets cannot be impacted by the Province. Although the Province may determine the Principles and Parameters around the 'Fair Allocation Plan', it does not impact the activities of the Trust once OPG has purchased the intangible asset.
	11 RT	The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. See above.
	12 RT	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible. *Trust Indenture and Regulations still outstanding.*

CONFIDENTIAL CABINET DOCUMENT

APPENDIX B:

Link between power and returns: principal-agency situations

The third criterion for having control is that the investor must have the ability to use its power over the investee to affect the amount of the investor's returns. When decision-making rights have been delegated or are being held for the benefit of others, it is necessary to assess whether the decision-maker is a principal or an agent to determine whether it has control. This is because if the decision-maker has been delegated rights that give it power, the decision-maker must assess whether those rights give it power for its own benefit, or merely power for the benefit of others. As an agent cannot have control over the investee, it does not consolidate the investee. A principal may have control over the investee, and if so, would consolidate the investee.

A decision maker shall consider the overall relationship between itself, the investee being managed and other parties involved with the investee, in particular all the factors below, in determining whether it is an agent:

a) the scope of its decision-making authority over the investee

As discussed above, OPG has decision-making authority over the Trust and its relevant activities. The Province has no right to determine what sort of funding decisions OPG should make to fund the intangible assets that they will purchase and OPG can choose not to purchase future intangible asset purchases.
Terms and Conditions to support this point: 1, 2, 3, 4, 5

b) the rights held by other parties (paragraphs B64–B67).

There are no substantive removal rights held by the Province for debt that already exists in the Trust.

Terms and Conditions to support this point: 3, 4, 5

c) the remuneration to which it is entitled in accordance with the remuneration agreement(s) (paragraphs B68–B70).

See section on 'Exposure or rights to variable returns' above.

Terms and Conditions to support this point: 6, 7, 8, 9

d) the decision maker's exposure to variability of returns from other interests that it holds in the investee (paragraphs B71 and B72).

See section on 'Exposure or rights to variable returns' above.

OPG will receive a 44% equity injection from the Province of Ontario, indirectly through the Ontario Financing Authority. Given that currently, the majority (currently 51%) of the Trust debt will be from External Markets and not the Province, it can be argued that OPG did not receive the majority of its interest in the investee as a contribution or loan from the Province. This shows that OPG is a principal, not a de-facto agent.

Terms and Conditions to support this point: 6, 7, 8, 9

Conclusion: OPG is not an agent for the Province as the arrangement does not provide for the Province to directly absorb any variability associated with the structure. If the Province decides to intervene at a later date due to evolving market conditions, an assessment would be made at that future date.

CONFIDENTIAL CABINET DOCUMENT

OPG Memo
Ontario

Analysis on whether OPG is an agent for ratepayers

OPG is not an agent for the ratepayers because OPG has substantive exposure to risk of loss of its own funds. The ratepayers do not have any of their own funds in any of the subordinated tranches and further, no decision making authority is delegated to the ratepayers relating to the relevant activities of the Trust.

Analysis on whether OPG is an agent for the IESO

OPG is not an agent of the IESO because the IESO faces no continuing risk of loss after sale of the intangible asset to OPG.

CONFIDENTIAL CABINET DOCUMENT

Ontario

LEGISLATION AND REGULATIONS COMMITTEE: MINISTRY APPROVAL FORM

LRC Tracking #: (DLEG-847)
EVista Tracking #: (SUB—DL-2017-00665)

Ministry of Energy

Ontario Fair Hydro Plan Act
Legislation

Profile at a Glance

Priority: Key
Public Interest: Very High
Key Stakeholder Interest: High
New Costs/Burdens: Yes for Government, Yes for Stakeholders
New Savings/Opportunities: Yes for Stakeholders; No for Government

Proposed Items for Review

1. New legislation titled the *Ontario Fair Hydro Plan Act, 2017*

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy	Cabinet approval received March 1	
TB/MBC	TB/MBC approval received March 9	

Deputy Minister — May 5, 2017 — Date

Minister — May 5, 2017. — Date

s. 1 Proposal and Context

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), intended to lower bills on average by 25% for a typical residential consumer, starting in the summer of 2017. About half a million small businesses and farms are also expected to benefit.

- Any rate increases for residential consumers over four years would be held to the rate of inflation.

- These measures include the 8% rebate introduced in January and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

- The OFHP also announced enhancements to a number of existing programs targeted at more vulnerable electricity consumers, including funding some or all of the costs of these programs from the tax base rather than the electricity ratebase.

- OFHP is part of a significant system restructuring that will address long-standing policy challenges and ensure greater fairness.

- To implement OFHP, the Ministry has prepared the Fair Hydro Act, 2017 in close collaboration with key ministries (i.e., Treasury Board, Finance, Attorney General, Cabinet Office), agencies (i.e., OEB, IESO, OPG) and third party financial advisors and local distribution companies (LDCs).
    - The proposed Fair Hydro Act, 2017 would be an omnibus bill with 2 schedules: the Ontario Fair Hydro Plan Act, 2017 and amendments to the Ontario Energy Board Act, 1998 and Electricity Act, 1998.

- The proposed OFHP legislation, supporting regulations and amendments to existing legislation (e.g., Electricity Act and Ontario Energy Board Act) will, if passed, enable implementation of the following key components of the Plan:

    A. Refinancing the Global Adjustment (GA) – The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

    B. Helping Vulnerable Electricity Consumers – The proposed legislation broadens the Rural or Remote Rate Protection Program (RRRP) by creating a new distribution rate protection component, expands the Ontario Electricity Support Program (OESP) and establishes a new On-Reserve First Nations Delivery Credit. The legislation also allows for these programs to be funded (partially for RRRP) through the tax-base.

A. GA Refinancing

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in clean energy initiatives are allocated fairly among present and future generations of consumers.
- Refinancing the Global Adjustment (GA) would be achieved through the proposed stand-alone legislation, regulations and amendments to existing legislation and regulations.
- Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.
- The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the GA. These mechanisms are described below.

B. Social Programs

- The proposed Ontario Fair Hydro Plan would help vulnerable electricity consumers by enhancing electricity support programs and shifting program costs onto the tax-base:
  - Enable Rural or Remote Electricity Rate Protection (RRRP) costs to be funded through provincial revenues;
  - Enhance Rate Protection through creation of new tax-base funded Distribution Rate Protection (DRP);
  - Enable Ontario Electricity Support Program (OESP) costs to be moved to tax base;
  - Create a new First Nation On-Reserve Delivery Credit, funded through provincial revenues

s. 2 Approach and Intended Outcomes

A. GA Refinancing

- The Fair Hydro Act, 2017 attempts to balance several key factors including financeability, accounting requirements and legal considerations.
- Following an extensive consultation process with internal and external experts, the proposed legislation strikes a balance between these three factors by:
  - Supporting financeability through a number of features, including enabling a provincial guarantee and provisions intended to provide certainty to investors in order to reduce borrowing costs and attract a wide investor base;

- Addressing the necessary accounting requirements through mechanisms to record funding, interest and the transfer of regulatory assets to avoid a fiscal impact to the province; and
- Mitigating legal risk by developing a methodology that attempts to fairly aligns costs and benefits.

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of clean energy initiatives are allocated fairly among present and future generations of consumers.
  - Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The proposed legislation would outline:
  - Roles and responsibilities for the OEB, IESO, OPG and the Province;
  - A detailed Preamble, Purpose and Definitions;
  - Details with respect to cost allocation, rate reduction methodology, implementation and financing;
  - Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
  - Amendments to other acts.

- The associated amendments to existing legislation and regulations include:
  - Electricity Act, 1998: amendments to provide OPG with the authority to establish a special purpose vehicle (SPV) for the investment asset and Ontario Energy Board Act, 1998: amendments to allow for OEB to set rates recognizing GA refinancing.

Preamble and Purpose

- The preamble of the proposed legislation establishes the rationale for the allocation of "clean energy costs" over time. That is, the development of a clean, modern and reliable electricity system has increased costs for ratepayers.

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of these investments are allocated fairly among present and future generations of consumers.
  - Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment. Note: These mechanisms are described below.

- The legislation also restricts the OEB, Minister of Energy and the Crown from reducing, impairing or ending Clean Energy Adjustments in the future:
  - The Lieutenant Governor in Council may authorize the Ministers of Finance and Energy to enter into guarantees and indemnities related to the Act.

- The proposed legislation aligns eligibility with the Ontario Rebate for Electricity Consumers Act, 2016.

Fair Adjustment

- Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for a typical residential consumer, and to achieve comparable bill reductions for other eligible consumers, for the period July 1, 2017 to April 30, 2018.
    - Under the legislation, the OEB must determine the amount within 15 business days of the legislation receiving Royal Assent.

- The Fair Adjustment also allows the LGIC to make regulations prescribing electricity rates after April 30, 2018.

Clean Energy Adjustment

- The Clean Energy Adjustment is the mechanism to recover the under-collection of GA from eligible consumers during the recovery period.

- The proposed Act outlines:
    - The process for determining the total Clean Energy Adjustment amount;
    - The obligation on individual ratepayers for the repayment of the amount; and
    - The inability to offset or bypass re-collection of the amount.

Fair Allocation Amount

- The Fair Allocation Amount is a calculation and allocation of clean energy costs and clean energy benefits over time.
    - The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager. Subsequent calculations may be undertaken by other agents as prescribed by the Minister.
    - It is expected that the calculation would lead to decreased rates in the near term with upward pressure on rates in the long term.

- Under the legislation the calculation of the Fair Allocation Amount is guided by the principles and purposes of the Act including the proportional allocation of clean energy costs and benefits.

Financial Services Manager

- The legislation appoints OPG as the Financial Services Manager.

Financing Plan

- The Fair Allocation Amount is a calculation and allocation of clean energy costs and clean energy benefits over time.

- The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager. Subsequent calculations may be undertaken by other agents as prescribed by the Minister.
- It is expected that the calculation would lead to decreased rates in the near term with upward pressure on rates in the long term.

- Under the legislation the calculation of the Fair Allocation Amount is guided by the principles and purposes of the Act including the proportional allocation of clean energy costs and benefits.

Regulatory Asset

- IESO will have a funding deferral resulting from the reduction in amounts collected during the first four years.

- The legislation enables IESO to record the under-collection of GA in a variance account, and deems the rights associated with this under-collected amount to be a Regulatory Asset.
  - OEB would determine rates to allow IESO to recover under-collection recorded in its variance account in the event the Regulatory Asset is not sold.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust.

Investment Asset

- The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an "Investment Asset".

  - The legislation establishes property rights for the Investment Asset such as the right to collect principal and interest and financing costs in the form of the clean energy adjustment from eligible consumers.

- The Investment Asset may in turn be sold to other investors or group of investors.

- Through the legislation, the Board, Minister and Crown undertake not to hinder the charging and remittance or collection of clean energy adjustments.
  - The Province, through the Minister of Finance and the Minister of Energy may agree to guarantee performance, any debts and obligations and backstop its undertaking.

Amendments to Other Acts

- The legislation stipulates required amendments to existing legislation such as:
  - The Electricity Act, 1998 – to expand the objects of IESO and OPG to enable them to perform their rights and obligations in the proposed Act

- The Ontario Energy Board Act, 1998 – to address license conditions and the determination of regulated payments.

B. Social Programs

- The proposed legislation provides the authority to implement two new rate mitigation programs and expands upon two existing programs.

- To date, a number of electricity support programs are funded through the electricity rate-base. There is opportunity to provide support to a more targeted subset of customers who are disproportionately affected by increased electricity costs and to shift these costs to the tax base.

- The proposed legislation is intended to provide rate relief and assistance for:

  - **High Distribution Cost Customers**: Some customers in rural areas where the cost to distribute electricity is high can experience difficulty in reducing their electricity bill through conservation, particularly when reliant on electric heating.
  - **Low-Income Customers**: Rising electricity costs make up a disproportionally large amount of the household expenditures for low-income households.
  - **First Nation On-Reserve Customers**: On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

Proposed Changes to the Ontario Energy Board Act, 1998 ("OEBA" or "Act")

- The Ontario Energy Board Act, 1998 would be amended to facilitate the roll out, expansion or change in funding of the following programs.

i. Rural or Remote Rate Protection (RRRP)

- RRRP is an existing program currently funded by ratepayers through the regulatory line of the electricity bill. Currently costs $1.58/month for a 750kWh consumer.
- Part of the program helps fund the costs of Hydro One customers classified into the "R2" residential rate class. There are approximately 330,000 R2 customers across the Province. These customers have some of the highest distribution costs in the Province. For R2 customers the enhanced RRRP, or Distribution Rate Protection (DRP), is provided in addition to the RRRP the customers are already eligible for under the existing RRRP.

- Section 79 would be amended to provide the government the ability to fund a portion of the Rural or Remote Rate Protection Program through the tax base by prescribing certain classes of consumers who will be funded through a legislative appropriation.

- This includes the ability to pass regulations respecting the making of rules for the compensation of distributors with the money appropriated flowing from the legislature through the IESO to the various LDCs who would then provide the rate relief directly on consumers' bills.
- Should the legislation pass, Energy proposes to amend O. Reg 442/04 to enable provincial funding to compensate Hydro One for provision of RRRP to its R2 customers.

ii. Expanded RRRP - Distribution Rate Protection

- While the RRRP helps mitigate some of the higher distribution costs for Hydro One R2 customers, there is an opportunity to provide further relief to consumers in relatively high-distribution cost outlier LDCs. This relief would be financed from the tax base.
- Mitigation would be provided by harmonizing distribution rates for prescribed LDCs, as set by the Ontario Energy Board. The mechanism for determining this rate would be set out in regulation.
- The new section 79.3 of the Act would enable Distribution Rate Protection, which satisfies the commitment to expand RRRP.
  - The section includes the power to pass regulations prescribing LDCs, the classes of consumers or consumers designated as distribution rate protected consumers, the maximum amount of the monthly base distribution charge, limitation periods, and the type of information required by the Board and Ministry to implement and administer the program, including financial transactions.

iii. Ontario Electricity Support Program (OESP)

- Section 79.2 would be repealed and replaced in order to provide the government with the ability to shift funding for the OESP (once existing rate-based pooled funding has been depleted) from the rate base to the tax base, and the ability to share information with MCSS to coordinate OESP and social assistance programs. The Ministry has already completed a regulatory amendment that, effective May 1, 2017:
  - Increases the existing OESP credit scales by an additional 50%; and
  - Expands the categories of OESP credits.
  - Provides for OESP to be funded from the tax-base once the IESO's OESP variance account has been depleted.
- The legislative amendments would provide authority to make regulations to replace existing O. Reg. 314/15 to implement these changes.
- The total fiscal impacts to the province from the newly enhanced OESP will amount to: $140 million in 2017-18, $261 million in 2018-19, $325 million in 2019-20 and $375 million in 2020-21.

- Schedule 2 amends the OESP provisions by prescribing the ability to fund the program from the tax base.
    - The section also provides that the Ontario Energy Board or any other entity prescribed in legislation would be responsible for administering the program.
    - In addition, the licenses of LDCs, the IESO, unit-sub meter providers or electricity retailers are deemed to include anything which is necessary to administer and implement the program as may be set out in regulations or by the Board.
    - The section also requires that the Ontario Energy Board continue funding the program using the amounts previously accumulated in the IESO's OESP variance account which is the difference between funds collected through the regulatory charge and expended on OESP to date, until these amounts are depleted and the program shifts to the tax-base.
    - The section provides for broad regulation making power and includes the provision for the creation of different classes of rate assisted consumers and establishing rules for the calculation of the rate assistance to be provided.
    - New provisions also provide the necessary authority to allow the OEB and the Ministry of Community and Social Services (MCSS) to share data on customers in the future to support increased participation in the OESP program among social assistance clients.

- Note: the intended approach involves proclaiming s.79.2 into force on a future date to be named by proclamation. This would allow time for the funds accumulated in the IESO's OESP variance account to be more fully expended prior to the repeal and replacement of s.79.2.
    - However, the MCSS data sharing provisions, along with ss. Amendments to s. 79.2.1, the new sections 79.3 and 79.4, would come into force upon Royal Assent.
    - The OESP charge has been removed from electricity bills, however a surplus account has been accumulated which the OEB will continue to use until depleted.

iv. First Nations On-Reserve Delivery Credit

- On June 27, 2016, following discussions on Hydro One shares and rates at COO's All Chiefs Conference, the Minister of Energy issued a letter directing the OEB to prepare a report providing "*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers*".

- The program is premised around the findings in the OEB report on a First Nations Delivery Rate Assistance. The proposed program features include:
    - Eliminating the delivery charge, or monthly service charge for those customers served by LDCs that do not have a delivery charge, from the bills of prescribed on-reserve customers. Regulations would then prescribe those on reserve consumers which are eligible for the on reserve credit.

- Continue to provide eligibility to OESP while not disturbing eligibility for the Low Income Energy Assistance Program (LEAP) currently funded by distributors outside of these amendments to the OEBA; and
- The program would be carried out by the 11 affected LDCs serving on-reserve consumers identified by the OEB in its report, including; Algoma Power Inc., Attawapiskat Power Corporation, Bluewater Power Distribution Corporation, Cat Lake Power Utility Ltd., Cornwall Electric Distribution, Hydro One Networks Inc. Hydro One Remote Communities Inc., PUC Distribution Inc., and Thunder Bay Hydro Electricity Distribution.

- The program is anticipated to have a fiscal impact on Government of $20 million, as estimated by the Ontario Energy Board, to implement.

- The new section 79.4 of the Act would establish the First Nation On-Reserve Delivery Credit. The section provides that for all prescribed consumers, living on-reserve, the entirety of their delivery line items will be removed from their bill as a delivery credit.
  - The program would be entirely funded through the tax base.
  - The section includes the power to make regulations prescribing further program details such as eligibility and funding parameters.

v. *Ministry of Finance Accountability Provisions*

- The social programs all involve the expenditure of tax money to fund the partial or entire program costs. As a result, the Ministry of Finance and Treasury Board Secretariat require that such money be tracked and accounted for throughout the process.

- Therefore, the OEBA has been amended to include new provisions between ss. 79.5 to 79.11 as follows
  - Section 79.5 – imposes information sharing and auditing requirements for the Ministry of Finance.
  - Section 79.6 – Defines the Finance Minister as the Minister responsible for ss. 79.7 to 79.11.
  - Section 79.7 – mandates record keeping, retention and content requirements.
  - Section 79.8 – enables the Minister of Finance to appoint inspectors who may carry out inquiries
  - Section 79.9 – sets out the regime for the recovery of overpayments
  - Section 79.10 – imposes confidentiality requirements on Ministry staff for the collection of information
  - Section 79.11 – creates offences for false or deceptive statements, fraud and the unlawful destruction of records.

s. 3 Direction and Urgency

A. GA Refinancing

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills for residential consumers as well as most small businesses and farms. The initiative was announced as starting in the summer of 2017.

- The legislation for GA refinancing requires the OEB to make further rate adjustments no later than fifteen business days after the legislation receives Royal Assent for Regulated Price Plan (RPP) consumers to achieve the full 25% for a typical residential consumer, and for other eligible consumers to also receive a comparable bill reduction.

- The full reduction from the OFHP is expected to be addressed through a July 1st RPP rate adjustment.

B. Social Programs

- The direction for the creation and implementation of the social programs is found in a variety of sources including the Cabinet Minute, throne speech given on the government's efforts to mitigate the high price of electricity in Ontario, and public commitments made by the Minister and other key government spokespeople.

- The program has been announced to commence as of July 1, 2017. This includes both local announcements and organized speeches and press conferences.

s. 4 Impact Assessment and Costs

A. GA Refinancing

- The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.
    - The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recovered.
    - The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year.

- It is still possible that the full value of the Regulatory Asset may not be purchased.
  - In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

- In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt.
  - The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
  - The Ministry of Energy has received an appropriation for $1.1 billion operating asset to support these injections for the fiscal year 2017/18, and will report back through PRRT for future funding. Based on the final fair allocation amount calculation, the equity injections would be required until the period of recovery begins.
  - The injections will be fiscally neutral for the province as they will be offset with the value of shares purchased from OPG.

- OPG will seek to achieve the highest possible credit rating (AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV/Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

B. Social Programs

i. Social Programs

Government Impact

- As approved in the TB/MBC submission of Mach 1st, 2017 and confirmed in Vote-Item 2905-1, the financial impacts on Government of the social programs for the period July 1 2017- March 31 2018 are anticipated to be as follows:

Program	2017-18 Budget
Rural or Remote Rate Protection	344,000,000
Ontario Electricity Support Program	140,000,000
On-Reserve First Nations Delivery Credit	15,000,000

- ENERGY will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Stakeholder Impact

The Schedule 2 social programs will impact Local Distribution Companies and their consumers.

- For example, the Distribution Rate Protection program would involve 8 LDCs, the First Nations On-Reserve Delivery Credit will involve 11 LDCs and the only impacted LDC from the changes to the legacy RRRP program is Hydro One Networks Inc. (the R2 rate class).
- There may be modest impacts on unit sub-meter providers and retailers, due to the requirement to flow financial assistance through to consumers served such entities.

- The compliance costs for LDCs will involve the expenditure of money to alter their billing systems in order to carry out the program. This includes costs to alter the bill presentment and to include a new line on the bill that highlights the First Nations On-Reserve Delivery Credit.

Agency Impact

- The Ontario Energy Board would have a role in continuing to administer the OESP and in setting the harmonized monthly base distribution charge for the purposes of the Distribution Rate Protection Program.

- The Independent Electricity System Operator would be responsible for for flowing the funds used to reimburse/compensate LDCs for the costs of delivering the social programs from the money appropriated for such purposes from the legislature. This requires the IESO to monitor program specific variance accounts and flow the amounts necessary to compensate LDCs for the costs incurred in carrying out the programs.

- The proposal advances the government's overarching goal of reducing the cost of electricity paid by residential customers, especially those facing the highest costs of delivery.

s. 5 Implementation

A. GA Refinancing

- On April 20, 2017, the Ontario Energy Board (OEB) announced new Regulated Price Plan (RPP) rates effective May 1 that include a portion of the bill reduction proposed under the OFHP.

- These new RPP rates will include 50% of the estimated reduction in GA. This reduction in RPP rates, along with the removal of the OESP charge and the existing 8% rebate, will mean that May bills will be 17% lower than they would otherwise

have been for an average consumer (15% lower for the typical Toronto Hydro consumer).

- The legislation for GA refinancing requires the OEB to make further rate adjustments no later than fifteen business days after the legislation receives Royal Assent for RPP consumers to achieve the full 25% for a typical consumer and for other eligible consumers to receive a comparable bill reduction.

- The full reduction from the OFHP is expected to be addressed through a July 1st RPP rate adjustment.

- Regulations will be required to supplement the framework of the legislation to ensure that the OEB can make the required rate adjustments and to enable the financing contemplated by OPG SPV/Trust.

- The regulations are anticipated to be brought forward in mid and late June.

B. Social Programs

- The social programs would be implemented through subsequent regulations to follow that will expand upon the legislative framework to provide actual program specifications.

- The regulations are anticipated to be brought forward by late June, to allow for a July 1st program implementation.

- The efforts required to implement the programs would primarily fall upon the impacted LDCs who would need to adjust their billing systems in order to carry out the program.
    - For the OESP, the legislation contains transitional retroactive application of the provisions to offset any potential lapses in implementation.
    - The transitional retroactivity powers mitigate the risk of LDCs being unable to actualize the necessary OESP-related changes to their billings systems in time for the July 1st roll out and provides the utilities an extra prescribed time period (anticipated to be in the range of three months) to sort out any billing system alterations.
    - For the high-cost distribution rate protection and the on-reserve credit, there are more limited transitional provisions provide distributors with a prescribed time by which they must have adapted their billing systems while maintaining program eligibility for the rate assistance being provided.

C. Legal Considerations

- In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a "low" risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

- Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:
    - The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.
    - If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).
    - By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.
    - The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

- The bill provides for provincial assurances, guarantees and a statutory cause of action.

- **The provincial assurance provision** is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

- The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

- In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

- **The guarantee provisions** are intended to backstop the provincial assurance provision and provide that:
  - the Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
  - the Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

s. 6 Delivery and Results Tracking

A. GA Refinancing

- The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager (OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister. Such update calculations will be required given uncertainty related to electricity demand, interest rates and actual GA costs.

- The legislation establishes a framework for processes once the ratepayer relief is set. There is limited control once the plan is set, which could represent challenges for electricity planning and rate mitigation in future Long-Term Energy Plans.

- Under the legislation, OPG, as the Financial Services Manager, must prepare a Financing Plan and submit it to the Minister.
  - The Financing Plan sets out the funding obligations and amounts related to the financing of the under-collected GA amounts.

B. Social Programs

- As the social programs are funded through the tax-base, and in keeping with normal practice, Treasury Board Secretariat and the Ministry of Finance require that provisions be included that track the flow of tax money and hold all parties accountable for the proper allocation of tax money (proposed new OEBA s. 79.5-79.11).

- The actual implementation of the programs would be required to be shown on the bill (timelines will be in stated in the regulations). This timeline is in accordance with the feedback provided to the Ministry and the Board by affected LDCs.

s.7 Stakeholder Consultations

A. GA Refinancing

- In the development of the proposed legislation, the Ministry of Energy has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors (lawyers and accountants) and third party financiers (i.e., investment dealers).

- In addition, the Ministry hosted LDC workshop sessions on March 16 and April 19, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation.

B. Social Programs

- The Ministry has consulted with Energy agencies such as the Ontario Energy Board and the Independent Electricity System Operator on their respective roles and responsibilities.

- The Chief of Ontario (COO) have publicly supported the introduction of the First Nations Delivery Credit. ENERGY met with COO on April 26, 2017 to discuss implementation.

- The Ministry held working groups with all affected LDCs:
  - The Ministry received several quantitative data submissions from LDCs to help support the program and to buttress the implementation issues flagged by the utilities.
  - The consultations occurred in person and over teleconference.

- The consultations respecting the RRRP, the DRP and the On-Reserve First Nations Delivery Credit revealed concerns from LDCs over the costs of implementation and the timelines and obstacles to implementing the billing system changes.

- The feedback from the OEB helped to shape the estimates for the program costs of the proposed On-Reserve First Nations Delivery Credit as well as implementation timelines for the aforementioned program.

- Other key Ministries such as the Ministry of Finance and Treasury Board Secretariat were consulted as their will be a role for them to play in overseeing the implementation of the program funding.

s.8 Other Jurisdictions and Harmonization

A. GA Refinancing

- The program would not impact upon any other jurisdiction.

- GA refinancing does not harmonize Ontario rules with other jurisdictions and are not comparable to other Canadian jurisdictions.

B. Social Programs

- The program would not impact upon any other jurisdiction.

- The social programs do not harmonize Ontario rules with other jurisdictions and are not comparable to other Canadian jurisdictions.

s. 9 Communications

A. GA Refinancing

- The communications for GA refinancing will be referenced in ongoing announcements related to OFHP broadly, and as necessary targeted communications for specific stakeholder group can be developed.

- Energy has prepared a Communications Snapshot which summarizes the approach to communications.

B. Social Programs

- Energy has prepared a Communications Snapshot which summarizes the approach to communications.

- In respect of the First Nations On-Reserve Delivery Credit, the LDCs will work in collaboration with the Chiefs of Ontario and the Ministry to promote and advertise the availability of the credit to all eligible on-reserve customers.

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	Tim Christie/Sunita Chander	5-6708/5-6594
Ministry Legal	Carolyn Calwell	2-8392
Ministry Communications		
Assistant or Deputy Minister's Office		
Cabinet Office Policy	Tim Hindmarch-Watson	5-4618

Appendices

Appendix A: Variance Memo
Appendix B: Compendium
Appendix C: Draft Legislation

Ministry of the Attorney General

Legal Services Branch

Ministry of Energy
Ministry of Economic Development and Growth
Ministry of Research, Innovation and Science
Ministry of Infrastructure
Accessibility Directorate of Ontario

56 Wellesley Street West
18th Floor,
Toronto, ON
M7A 2E7

Telephone: (416) 325-1841
Fax: (416) 326-1021

Ministère du Procureur général

Direction des services juridiques

Ministère de l'Énergie
Ministère du Développement économique et de la Croissance
Ministère de la Recherche, de l'Innovation et des Sciences
Ministère de l'Infrastructure
Direction générale de l'accessibilité pour l'Ontario

56, rue Wellesley Ouest
18e étage,
Toronto, ON
M7A 2E7

Téléphone: (416) 325-1841
Télécopieur: (416) 326-1021

Ontario

PRIVILEGED AND CONFIDENTIAL

Memorandum To: The Honourable Glen Murray
Chair of the Legislation and Regulations Committee

From: Carolyn Calwell
Director, Legal Services Branch

Date: May 5, 2017

Re: Ontario's Fair Hydro Plan
An Act to enact the Ontario Fair Hydro Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

I have examined the draft of the above-referenced item being submitted to Legislation and Regulations Committee on May 10, 2017 and have compared that draft with the policy approved by Cabinet on March 1, 2017.

As a result of this comparison, I am able to advise you that the draft corresponds to the approved policy with the exception of the variances identified on the attached chart.

Carolyn Calwell
Director

Ontario's Fair Hydro Plan
An Act to enact the Ontario Fair Hydro Act, 2017
and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Minute Item	Approved Policy/Policy Sought to be Approved	Proposed Variance	Degree of Variance	Rationale/Commentary
1.A	Total projected bill increases will be kept in line with Consumer Price Index (CPI) **until the end of 2021.**	Bill increases will be prescribed by regulation for the period May 1, 2018 **to June 30, 2021**.	Low	June 30, 2021 aligns with public communications that rate increases will be held to inflation over the next four years. This regulation making authority would enable the government to keep bill increases in line with CPI.
1.A	Cap bill increases due to repayments at around 10% of the total bill.	Bill increases will not be capped.	High	Consultation with stakeholders and external advisors revealed that a legislated cap would undermine investors' certainty in recovering their investment. However, the debt rating will be impaired if modelling suggests that rates could increase more than 10%, providing a cap in practical terms.

Fair Hydro Act, 2017

COMPENDIUM

The proposed Bill, the *Fair Hydro Act, 2017*, if enacted, would enact the *Ontario Fair Hydro Plan Act, 2017* and amend various Acts according to the provisions of Schedules 1 and 2 set out in greater detail below.

Schedule 1
Ontario Fair Hydro Plan Act, 2017

Schedule 1 enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" describes the policies of the Government of Ontario related to fostering the development of a clean, modern and reliable electricity system.

Part I of the Act sets out the purposes of the Act and includes protections and assurances related to investor interests.

Under Part II of the Act, the Ontario Energy Board is required to determine reduced electricity rates that would achieve a 25% reduction in monthly invoice amounts from July 1, 2017 to April 30, 2018 for a hypothetical "regulated rate consumer" who meets prescribed criteria. The methodology to be applied by the Ontario Energy Board to determine electricity rates after April 30, 2018 would be prescribed by regulations.

Part III of the Act requires "specified consumers" to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV of the Act requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among specified consumers.

Also under Part IV, Ontario Power Generation Inc. is appointed as the Financial Services Manager. The Financial Services Manager is required to prepare a written "Financing Plan" to evaluate whether potential funding obligations should be incurred to acquire and

finance investment assets (under Part V). Constraints are placed on incurring funding obligations that would result in amounts becoming payable in respect of the clean energy adjustment from July 1, 2017 to April 30, 2021. In accordance with the Financing Plan, the Financial Services Manager may establish financing entities that may incur funding obligations.

Part V of the Act requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral for each month. The balance in the variance account becomes a "regulatory asset", which the IESO has the right to recover from specified consumers through rates set by the Ontario Energy Board. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity. The transfer results in the financing entity acquiring a corresponding "investment interest". The Act sets out various rules respecting the validity and priority of such a transfer.

In Part VI, the Act provides various rules in respect of the "investment asset" created by the transfer under Part V of a specified portion of the regulatory asset. Part VI provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. The Act also includes rules respecting the validity and priority of transfers of investment interests and the granting of a security interest in an investment interest by an investment interest owner.

Part VII deals with various administrative and miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

Part VIII includes consequential amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1999* to address various matters relating to the enactment of the new Act.

Schedule 2
Amendments to the Ontario Energy Board Act, 1998

Schedule 2 amends the *Ontario Energy Board Act, 1998*.

Section 79 of the Act is amended so that the rate protection provided to certain classes of rural or remote rate protected (RRRP) consumers may be funded out of money appropriated by the Legislature, rather than by consumers. Consumers would still be required to fund the remaining portion of RRRP not funded through appropriations.

Section 79.2 of the Act, which governs the Ontario Electricity Support Program (OESP), is repealed and replaced on a date to be named by proclamation of the LGIC. Once s.79.2 is proclaimed, the program would be continued, but will be funded out of money

appropriated by the Legislature after the variance account maintained by the IESO is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the OESP.

New provisions are created in the Act to establish programs to provide rate protection to certain distribution rate-protected residential consumers and a delivery credit to on-reserve consumers.

The Schedule also contains various amendments of a technical and administrative nature to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

The Schedule contains regulation-making authority in order to specify the details required to implement the various government-funded.

CONFIDENTIAL
GOV2017.089.e
1-TP

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of such a transfer are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

CONTENTS

Preamble

PART I
GENERAL

1. Interpretation
2. Effect of invalidity
3. Purposes
4. Crown bound
5. Protection and assurances

PART II
FAIR ADJUSTMENT

6. Definitions
7. Regulated rate consumers, first adjustments
8. Other specified consumers, first adjustments
9. Determinations by Board
10. Implementation by electricity vendors
11. Subsequent adjustments
12. Sub-metering

PART III
CLEAN ENERGY ADJUSTMENT

13. Specified consumers to pay
14. Irrevocability of amount
15. Determination of clean energy adjustment
16. IESO to receive amounts
17. Electricity vendor to invoice specified consumers

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

18. Appointment
19. Duties and powers

FAIR ALLOCATION AMOUNT

20. Minister to calculate fair allocation amount

FINANCING PLAN

21. Financial Services Manager to prepare Financing Plan
22. Incurrence of funding obligations

PART V
THE REGULATORY ASSET

23. IESO deferral
24. Variance account to be established, maintained
25. Regulatory asset established
26. Transfer of regulatory asset
27. Validity of transfer

PART VI
THE INVESTMENT ASSET

28. Investment asset established
29. Investment asset, irrevocable rights and interests
30. Transfer of investment interest
31. Validity of transfer
32. Investment interest owner may grant security interest

PART VII
MISCELLANEOUS

33. Appointment of agent, invoicing or collection
34. Board's authority
35. Sequestration
36. Choice of law
37. Conflict
38. No further approvals, etc.
39. Liability

40. References in marketing materials and offering documents
41. Regulations

PART VIII
AMENDMENTS TO OTHER ACTS

42. Electricity Act, 1998
43. Ontario Energy Board Act, 1998

PART IX
COMMENCEMENT AND SHORT TITLE

44. Commencement
45. Short title

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; ("initiative pour l'énergie propre")

"electricity vendor" means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; ("vendeur d'électricité")

"fair allocation amount" means an amount calculated under section 20; ("French")

"finance amount" means the finance amount determined in accordance with the regulations; ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 18; ("gestionnaire des services financiers")

"financing entity" means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); ("entité de financement")

"Financing Plan" means the plan prepared under section 21; ("plan de financement")

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; ("obligation financière")

"funding rebate" means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO deferral" means the amount determined under section 23; ("French")

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("propriétaire de l'actif d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("French")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definitions

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998 for the purposes of subsection 79.16 (1) of that Act.*

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. ("French")

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998 and despite section 79.16 of that Act, t*he electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board *solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998 shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted*

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998 and* subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998 in respect of prescribed classes of specified consumers who are not regulated rate consumers.*

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998 or the regulations*.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest

owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.*

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the Ontario Fair Hydro Plan Act, 2017" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the Ontario Fair Hydro Plan Act, 2017" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14) The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Financing Plan Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; "(programme d'aide gouvernementale)"

"rate-assisted consumer" means a consumer referred to in subsection (7). "(consommateur admissible à l'aide tarifaire)"

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; **(French)**

"monthly base distribution charges" has the meaning provided for in the regulations. (frais de distribution mensuels de base)

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9. (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Fair Hydro Act, 2017

COMPENDIUM

The proposed Bill, the *Fair Hydro Act, 2017*, if enacted, would enact the *Ontario Fair Hydro Plan Act, 2017* and amend various Acts according to the provisions of Schedules 1 and 2 set out in greater detail below.

Schedule 1
Ontario Fair Hydro Plan Act, 2017

Schedule 1 enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" describes the policies of the Government of Ontario related to fostering the development of a clean, modern and reliable electricity system.

Part I of the Act sets out the purposes of the Act and includes protections and assurances related to investor interests.

Under Part II of the Act, the Ontario Energy Board is required to determine reduced electricity rates that would achieve a 25% reduction in monthly invoice amounts from July 1, 2017 to April 30, 2018 for a hypothetical "regulated rate consumer" who meets prescribed criteria. The methodology to be applied by the Ontario Energy Board to determine electricity rates after April 30, 2018 would be prescribed by regulations.

Part III of the Act requires "specified consumers" to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV of the Act requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among specified consumers.

Also under Part IV, Ontario Power Generation Inc. is appointed as the Financial Services Manager. The Financial Services Manager is required to prepare a written "Financing Plan" to evaluate whether potential funding obligations should be incurred to acquire and

finance investment assets (under Part V). Constraints are placed on incurring funding obligations that would result in amounts becoming payable in respect of the clean energy adjustment from July 1, 2017 to April 30, 2021. In accordance with the Financing Plan, the Financial Services Manager may establish financing entities that may incur funding obligations.

Part V of the Act requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral for each month. The balance in the variance account becomes a "regulatory asset", which the IESO has the right to recover from specified consumers through rates set by the Ontario Energy Board. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity. The transfer results in the financing entity acquiring a corresponding "investment interest". The Act sets out various rules respecting the validity and priority of such a transfer.

In Part VI, the Act provides various rules in respect of the "investment asset" created by the transfer under Part V of a specified portion of the regulatory asset. Part VI provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. The Act also includes rules respecting the validity and priority of transfers of investment interests and the granting of a security interest in an investment interest by an investment interest owner.

Part VII deals with various administrative and miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

Part VIII includes consequential amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1999* to address various matters relating to the enactment of the new Act.

Schedule 2
Amendments to the Ontario Energy Board Act, 1998

Schedule 2 amends the *Ontario Energy Board Act, 1998*.

Section 79 of the Act is amended so that the rate protection provided to certain classes of rural or remote rate protected (RRRP) consumers may be funded out of money appropriated by the Legislature, rather than by consumers. Consumers would still be required to fund the remaining portion of RRRP not funded through appropriations.

Section 79.2 of the Act, which governs the Ontario Electricity Support Program (OESP), is repealed and replaced on a date to be named by proclamation of the LGIC. Once s.79.2 is proclaimed, the program would be continued, but will be funded out of money

appropriated by the Legislature after the variance account maintained by the IESO is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the OESP.

New provisions are created in the Act to establish programs to provide rate protection to certain distribution rate-protected residential consumers and a delivery credit to on-reserve consumers.

The Schedule also contains various amendments of a technical and administrative nature to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

The Schedule contains regulation-making authority in order to specify the details required to implement the various government-funded.

Ministry of the Attorney General

Legal Services Branch

Ministry of Energy
Ministry of Economic Development and Growth
Ministry of Research, Innovation and Science
Ministry of Infrastructure
Accessibility Directorate of Ontario

56 Wellesley Street West
18th Floor,
Toronto, ON
M7A 2E7

Telephone: (416) 325-1841
Fax: (416) 326-1021

Ministère du Procureur général

Direction des services juridiques

Ministère de l'Énergie
Ministère du Développement économique et de la Croissance
Ministère de la Recherche, de l'Innovation et des Sciences
Ministère de l'Infrastructure
Direction générale de l'accessibilité pour l'Ontario

56, rue Wellesley Ouest
18e étage,
Toronto, ON
M7A 2E7

Téléphone: (416) 325-1841
Télécopieur: (416) 326-1021

PRIVILEGED AND CONFIDENTIAL

Memorandum To: The Honourable Glen Murray
Chair of the Legislation and Regulations Committee

From: Carolyn Calwell
Director, Legal Services Branch

Date: May 5, 2017

Re: Ontario's Fair Hydro Plan
An Act to enact the Ontario Fair Hydro Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

I have examined the draft of the above-referenced item being submitted to Legislation and Regulations Committee on May 10, 2017 and have compared that draft with the policy approved by Cabinet on March 1, 2017.

As a result of this comparison, I am able to advise you that the draft corresponds to the approved policy with the exception of the variances identified on the attached chart.

_____
Carolyn Calwell
Director

Ontario's Fair Hydro Plan
An Act to enact the Ontario Fair Hydro Act, 2017
and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Minute Item	Approved Policy/Policy Sought to be Approved	Proposed Variance	Degree of Variance	Rationale/Commentary
1.A	Total projected bill increases will be kept in line with Consumer Price Index (CPI) **until the end of 2021.**	Bill increases will be prescribed by regulation for the period May 1, 2018 **to June 30, 2021.**	Low	June 30, 2021 aligns with public communications that rate increases will be held to inflation over the next four years. This regulation making authority would enable the government to keep bill increases in line with CPI.
1.A	Cap bill increases due to repayments at around 10% of the total bill.	Bill increases will not be capped.	High	Consultation with stakeholders and external advisors revealed that a legislated cap would undermine investors' certainty in recovering their investment. However, the debt rating will be impaired if modelling suggests that rates could increase more than 10%, providing a cap in practical terms.