Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: REG-11751, REG-11752
EVista Tracking #: SUB-REG-2017-02113, SUB-REG-2017-02114

Ministry of Energy

Ontario Fair Hydro Plan Act, 2017
Regulations

Profile at a Glance

Priority: Key
Public Interest: Very high
Key Stakeholder Interest: Very high
New Costs/Burdens: No for Stakeholders; No for Government
New Savings/Opportunities: No for Stakeholders; No for Government

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Proposed Items for Review

1. Amending Ontario Regulation (O.Reg.) 206/17 made under the *Ontario Fair Hydro Plan Act, 2017 (OFHPA),* which is Schedule 1 of the *Fair Hydro Act, 2017*.

2. Amending O. Reg. 429/04 (Adjustments under Section 25.33 of the Act) made under the *Electricity Act, 1998* (EA).

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC		

Originally signed by Serge Imbrogno on November 10, 2017
Deputy Minister — Date

Originally signed by Glenn Thibeault on November 10, 2017
Minister — Date

s. 1 **Proposal and Context**

Supporting the Further Implementation of Ontario's Fair Hydro Plan under the OFHPA

- On May 11, 2017, the government introduced Bill 132, the *Fair Hydro Act, 2017* (FHA) which is comprised of two Schedules:
  - Schedule 1 is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* (EA) and the *Ontario Energy Board Act, 1998* (OEBA); and
  - Schedule 2 includes the electricity social program-related amendments to the OEBA, 1998.
- On May 31, 2017, the *Fair Hydro Act, 2017* passed third reading and received Royal Assent on June 1, 2017.
- Under the OFHPA, a portion of the Global Adjustment (GA) is being refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).
- Under the OFHPA, which enables GA Refinancing, electricity bills of a typical residential consumer have been reduced by 25 per cent effective July 1, 2017, compared to what they would have been without the initiatives included in Ontario's Fair Hydro Plan. In addition, Schedule 1 provides the authority under which further increases to electricity bills for a typical consumer are to be held to the rate of inflation. Up to 500,000 small businesses and farms are also benefitting from GA Refinancing.
- Under the OFHPA, the Independent Electricity System Operator (IESO) records the GA deferral in a variance account as a "regulatory asset," which represents a right to recover the balance in the variance account from specified consumers as set out in the Act. The regulatory asset is then purchased by a financing entity established by Ontario Power Generation (OPG), as the Financial Services Manager (FSM).
- OPG, as FSM, will finance these purchases through a combination of an equity investment by the Province and external private sector financing.
- The Ministry of Energy is proposing amendments to Ontario Regulation 206/17 (General), under the *Ontario Fair Hydro Plan Act, 2017* (OFHPA), and Ontario Regulation 429/04 (Global Adjustment), under the *Electricity Act 1998* (EA), that are required to address accounting and commercial/financing requirements that would allow GA refinancing to proceed as planned.

s. 2 Approach and Intended Outcomes

Note appendices here, or ERASE, e.g. See Appendix X, Details of Changes

A. Proposed Amendments to O. Reg. 206/17 (General)

- The Ministry of Energy is proposing amendments to O. Reg. 206/17 (General) that would, if approved, set out an approach to appropriately managing a potential acceleration of debt repayment in the event of a default, including impacts on Clean Energy Adjustments (CEAs) payable by specified consumers as defined in the OFHPA.
- Additional proposed amendments would clarify the operation of O. Reg. 206/17, including the recovery of financing entity carrying costs during the period after May 1, 2021, in which the Fair Allocation Amount (FAA), as defined under the OFHPA, is less than the amount of such carrying costs.

B. Proposed Amendments to O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act)

- In order for OPG to market the debt, a security arrangement is required to backstop smaller Local Distribution Companies (LDCs) without any or a sufficiently sound credit ratings during the years in which CEAs are collected from consumers. A mechanism is required to enable IESO to recover both carrying costs and any default costs associated with the security arrangement.
- Proposed amendments to O. Reg. 429/04 would, if approved, enable the recovery of such costs from consumers through the Global Adjustment (GA).
- In the event of an LDC default – resulting in CEAs not being recovered from the relevant LDC – the amounts related to uncollected CEAs would be recovered from consumers through the GA.
- Note: The risk of LDC default is considered to be low. However, regulatory amendments are necessary to provide security to the market should such a default occur.

s. 3 Direction and Urgency

Note appendices here, or ERASE, e.g. See Appendix X, Variance Memo

- The direction for the creation and implementation of GA Refinancing programs is found in the March 1, 2017 Cabinet Minute and subsequent public commitments.
- Following the *Fair Hydro Act, 2017* receiving Royal Assent on June 1, 2017, the government, OPG, the IESO, the Ontario Energy Board (OEB) and legal, financial and energy sector third-party experts have been working to implement GA Refinancing.

- For GA Refinancing to proceed as planned under the legislation, OPG needs to go to market so that the GA deferral can be funded (i.e., so that the regulatory asset can be transferred to the OPG financing entity as set out in legislation). Until such time as this takes place, IESO must manage the GA deferral. It is therefore critical that OPG proceed to market in timely fashion.
- The Ministry of Energy understands OPG intends to go to market in late November or early December 2017. OPG is currently in discussion with rating agencies. OPG advises that the proposed amendments to the General regulation are critical for it to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing).
- Since OEB adjusted rates to reflect Ontario's Fair Hydro Plan (OFHP) reductions partially on May 1, 2017 and fully on July 1, 2017, IESO has been managing a reduction in the GA received from electricity consumers.

s. 4 Impact Assessment and Costs

Note appendices here, or ERASE, e.g.
See Appendix X, Impact Assessment

Government Impact

- No fiscal impact is expected to be recognized by Government as a result of the proposed amendments to O. Reg. 206/17 or 429/04 made under the OFHPA.

Stakeholder Impact

- The proposed amendments to O. Reg. 429/04 would impact IESO and licensed distributors in relation to their role in the recovery of amounts associated with the security arrangement payable by consumers through the GA. Note: The risk of LDC default is considered to be low.

Agency Impact

- The proposed amendments to O. Reg. 206/17 would impact OPG in its role as FSM, including its ability to proceed with the implementation of GA Refinancing as planned.
- The proposed amendments to O. Reg. 429/04 would impact IESO and the OEB in relation to their roles in the determination, allocation, and recovery of amounts associated with the security arrangement payable by consumers through the GA.

s. 5 Implementation

Note appendices here, or ERASE, e.g.
See Appendix X, Implementation Plan

- The proposed amendments to O. Reg. 206/17 would address accounting and commercial/financial requirements according to OPG, enabling it to proceed with the initial debt issuance in late November or December 2017 (i.e., OPG proceeding to market to secure financing).

- The proposed amendments to O. Reg. 429/04 is required to enable the recovery of costs associated with the establishment of a security arrangement to backstop smaller Local Distribution Companies (LDCs) without any or a sufficiently sound credit ratings during the years in which CEAs are collected from consumers. These proposed provisions would come into effect after the inflationary cap period (e.g. post May 1, 2021).

s. 6 Delivery and Results Tracking

Note appendices here, or ERASE, e.g.
See Appendix X, Delivery Milestones

- Further work to enable GA Refinancing to be undertaken in 2017:
  - OPG to produce a Financing Plan in November that would set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA);
  - IESO recording deferral amounts in relation to the establishment of the regulatory asset;
  - OPG/financing entity to begin purchase of investment asset;
  - OPG to work with lenders and credit rating agencies in establishing the vehicles for selling of investment asset interests; and
  - OPG to proceed with initial debt issuance.

s.7 Stakeholder Consultations

Note appendices here, or ERASE, e.g.
See Appendix X, Stakeholders

- The development of the proposed amendments was preceded by extensive consultation with representatives from OEB, IESO and OPG, as well as their external advisors (i.e., lawyers, accountants and underwriters).
- As appropriate, other Ministries consulted in respect of particular issues.
- A steering committee chaired by the Deputy Minister of the Ministry of Energy met and were briefed weekly on the status of the regulatory amendments (i.e., the “Rate Mitigation Implementation Group” consisting of senior executives of the Ministry of Energy, Cabinet Office, Ministry of Finance, Treasury Board Secretariat, OFA, OPCD, OPG, OEB and IESO).

s.8 Other Jurisdictions and Harmonization

Note appendices here, or ERASE, e.g.
See Appendix X, Comparison with Quebec

- The financing structure is similar to several jurisdictions in the U.S., and uses a form or securitization that is commonly used in the financial markets.

- The recognition of regulatory assets brings IESO in line with 6 other independent system operators in North America, including AESO, ISO New England, NYISO, MISO, PJM and ERCOT.

- GA Refinancing will not have an impact upon any other jurisdiction.

s. 9 Communications

Note appendices here, or ERASE, e.g.
See Appendix X, Communications Plan

- The Ministry does not plan to proactively communicate on the regulatory amendments.
- The Ministry has an extensive broader OFHP communications strategy in place.
- Reactive materials will include updated Q&As, key messages and issues management plan.
- Will continue to monitor and track:
  - media reactions and editorials
  - incoming correspondence
  - response by opposition MPPs

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
Ministry Policy/Program	ESTD	
Ministry Legal	James P. H. Rehob	(416) 325-6676
Ministry Communications		
Assistant or Deputy Minister's Office	Steen Hume	
Cabinet Office Policy		

Appendices

Appendix A: Regulation Comparison Chart - O. REG. 429/04
Appendix B: Regulation Comparison Chart - O. REG. 206/17