

Version 6

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A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

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DEFINITIONS

Definitions

1. (1) In this Regulation,

“capital account” means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

- “derivative agreement” means any derivative agreement, including interest rate swaps and cross-currency swaps and any associated collateral, entered into in connection with or to hedge the exposure of a financing entity under a funding obligation;
- “derivative payment” means any payment required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;
- “financing entity expense” includes fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act and any taxes on those amounts;
- “finance reserve account” means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of funding obligations and other finance amounts or for related contingencies;
- “funding cost” means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment;
- “governing documents” means, in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation;
- “maturity date” means, in respect of a funding obligation, the date set out in the governing documents of the funding obligation on which all outstanding principal, interest and other amounts outstanding are due and payable;
- “recovery amount” means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations;
- “redemption amount” means the amount payable by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the redemption, prepayment or repurchase;
- “refinancing amount” means the principal amount of a funding obligation incurred by a financing entity in respect of a refinancing;
- “repayment” means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation;

“scheduled payment date” means, in respect of a funding obligation, a date, set out in the governing documents of the funding obligation, on which a payment is scheduled;

“tax” means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory, including,

- (a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge,
 - (i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use,
 - (ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, *ad valorem* tax, franchise tax, transfer tax, withholding tax, property tax, surtaxes, payroll tax, employment tax or employer health tax,
- (b) government pension plan premiums or contributions, social security premiums, workers’ compensation premiums and employment or unemployment insurance or compensation premiums and contributions,
- (c) an amount or charge under Part VI of the *Electricity Act, 1998*,
- (d) an instalment in respect of an amount mentioned in clauses (a) to (c), and
- (e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c);

“tax liability” means all tax paid or payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the Act;

“tax refund” means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the Act.

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

“readjustment amount” means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a determination of the Board under Part II of the Act.
2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

Funding obligation

2. (1) For the purposes of the definition of “funding obligation” in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

1. A refinancing.
2. Any derivative payment.
3. Any amount raised for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.

(2) Funding obligations include principal, interest, fees and other amounts owing in respect of the amounts.

Refinancing

3. (1) For the purposes of the definition of “refinancing” in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.
2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.
3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

CLEAN ENERGY ADJUSTMENT

Specified consumers, unit sub-meter providers, s. 13 (6) of the Act

4. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.
2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

Finance amount

5. (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:
 - i. Amounts paid or payable during the period in respect of repayments.
 - ii. Funding costs paid or payable during the period.
 - iii. Redemption amounts paid or payable during the period.
 - iv. Derivative payments required to be made during the period.
 - v. Amounts deposited, as required under the governing documents of funding obligations, into capital accounts or finance reserve accounts during the period.
 - vi. Financing entity expenses paid or payable during the period.
 - vii. Tax liabilities payable during the period.
2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

- i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period.
 - ii. Amounts received by the financing entity during the period in respect of funding rebates.
 - iii. Recovery amounts received during the period.
 - iv. Refinancing amounts that are applied to repayments during the period.
 - v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.
 - vi. Tax refunds received during the period.
3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1.

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

1. The determination shall be made by applying a cash basis accounting method.
2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received or made available during that period of time.
3. If the determination is in respect of a future period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received or made available during that period of time.
4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash amounts.

(3) Despite subsection (2), taxes may be estimated in respect of a particular tax reporting period of a financing entity and allocated in respect of various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.
2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period, determined without taking into account paragraph 1, shall be deemed to be a tax refund of the financing entity for the first period commencing after the particular tax reporting period.
3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period, determined without taking into account paragraph 1, exceeds the estimated taxes shall be deemed to be a tax liability of the financing entity for the first period commencing after the particular tax reporting period.
4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply:
 - i. The assessed or reassessed amount shall be deemed to be a tax liability of the financing entity for the first period commencing after the date of the assessment or reassessment.
 - ii. Any interest charged on the assessed or reassessed amount following the date of the assessment or reassessment shall be deemed to be a tax liability of the financing entity as the interest is paid or accrues.
 - iii. Once there has been a final determination with respect to the tax liability of the finance entity in respect of the particular tax reporting period, the amount, if any, by which the tax liability of the financing entity for the tax reporting period is decreased from the assessed or reassessed amount, together with the after-tax amount of any refund interest received by the financing entity, shall be deemed to be a tax refund of the financing entity for the first period commencing after the final determination.

(4) For the purposes of subparagraph 4 iii of subsection (3),

“final determination” means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

Determining true up amount

6. (1) Unless all funding obligations and other finance amounts are paid in full, the Financial Services Manager shall calculate the true up amount in respect of each reference period.

(2) The Financial Services Manager may, at any time during a reference period, determine the true up amount in respect of the remaining portion of the reference period if,

- (a) all funding obligations and other finance amounts have not been paid in full,
- (b) the Board has made a determination under subsection 15 (4) of the Act in respect of the reference period; and
- (c) the Financial Services Manager reasonably forecasts that there will be a material shortfall in the collection of the clean energy adjustment relative to the estimated finance amount payable in respect of a reference period.

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows:

$$T = (A - B) + C$$

Where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

(4) The Financial Services Manager shall, when determining the amounts described in “C” in the formula set out in subsection (3), have regard to amounts payable that were not collected

and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true-up amount.

Notification to Board

7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all funding obligations and other finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

- (a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and
- (b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (3), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

- (a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and
- (b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager makes a determination under subsection 6 (2) in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of the remaining months in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination as soon as possible.

Board to determine rates, subs. 15 (4) of Act

8. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.

(1.1) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecast electricity consumption of specified consumers in respect of the period.

(2) For the purposes of subsection (1.1), the forecast electricity consumption of specified consumers shall be based on forecast information provided to the Board by the IESO.

(3) If notice of a determination is provided under subsection 7 (2) or (5), the rate shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(4) If notice of a redetermination is provided under subsection 7 (6), the rate shall be determined by the Board so that the rate takes effect,

- (a) if the notice was provided before the fifteenth day in a month, on the first day of the month following the month in which the notice was provided; or
- (b) if the notice was provided on or after the fifteenth day in a month, on the first day of the second month following the month in which the notice was provided.

IESO to receive, remit amounts, s. 16 of the Act

9. (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts to the financing entities within a reasonable period of time.

Electricity vendors to invoice, collect, s. 17 of the Act

10. (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are deposited into a segregated account established for the purpose of receiving those amounts exclusively.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

(4) Subject to any requirement to the contrary under any Act or regulation, each electricity vendor shall make the records mentioned in subsection (3) available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

FAIR ALLOCATION AMOUNT

Prescribed period, amount

11. (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on January 1, 2005 and ending on April 30, 2017.

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act are less than or equal to the amounts determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

Where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 of subsection 20 (1) of the Act.

Determination of estimated financing costs

12. (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following amounts, after eliminating any duplication, that are forecast to become payable during the reference period:

1. Estimated funding costs.
2. Estimated financing entity expenses.

3. Estimated funding rebates.

(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.
2. The principal owing by a financing entity during a reference period paid in full by applying funds that are forecast to be available to it under the Financing Plan after all other forecast finance amounts for the reference period have been paid in full.

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that one or more determinations under section 9 or 11 of the Act in respect of a past reference period have resulted in a readjustment amount.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 3 of subsection (1), calculate a portion of the readjustment amount that should be attributed to the reference period and include it in the determination of the estimated financing costs in respect of the reference period.

(5) For the purposes of subsection (4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered equally over the remaining reference periods.

Minister's considerations

13. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

1. Electricity prices.
2. Interest rates.
3. Inflation.
4. Electricity consumption.
5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

FINANCING PLAN

Financing plan, principles and assumptions prescribed under subs. 21 (3) of the Act

14. (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The IESO deferral for future months, based on the most recent calculation of the fair allocation amount.
2. Future transfers of specified portions of the regulatory asset.
3. The maturities of funding obligations.
4. Cash flow requirements to meet contractual obligations associated with funding obligations.
6. Descriptions of current funding options, including terms and conditions.
7. Descriptions of currency and interest rate hedging programs, if applicable.
8. Financing entity expenses.
9. Interest rates.
10. The need for and implementation of financing reserve accounts and capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

1. The Financial Services Manager should,
 - i. seek the best terms available at the time of incurrence for a financing transaction of the size and type contemplated by the Financing Plan,
 - ii. apply the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests,
 - iii. consider the interests of rate payers and specified consumers with respect to stable and predictable electricity rates,
 - iv. act as any reasonably prudent financial services manager would act in similar circumstances, and

- v. deal with related parties on arms' length terms.

2. The Financing Plan should,

- i. identify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada,
- ii. describe how recovery amounts will be applied to funding obligations over time,
- iii. address the capitalization of proposed financing entities,
- iv. describe strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,
- v. seek to minimize tax consequences associated with incurring a funding obligation, and
- vi. articulate the principles by which the Financial Services Manager will make decisions regarding the following:
 - A. Interest rates.
 - B. The term to maturity of funding obligations.
 - C. Refinancing.
 - D. Deposits to and withdrawals from reserve accounts.
 - E. Indemnifications.
 - F. Fees.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by an officer of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

THE REGULATORY ASSET

Determination of IESO deferral

15. The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:
 - i. The sum of all amounts payable to the IESO in the month by electricity vendors and specified consumers under the *Electricity Act, 1998* and the market rules made under section 32 of that Act, without taking into account any of the following:
 - A. Variances reported to and recorded monthly by the IESO in a variance account under section 5 of Ontario Regulation 430/04 (Payments Re Section 25.33 of the Act) made under that Act.
 - B. Rates determined by the Board under Part II of the Act.
 - ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO with rates determined under Part II of the Act.
2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.
3. Any amounts incurred by the IESO on or after May 1, 2017 and before the Act came into force.

Adjustments that may be recorded by IESO

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.
2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* and costs incurred in relation to the balances.

MISCELLANEOUS

Investment asset, s. 29

17. The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

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1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustments are deposited into it.
2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

18. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

Disclosure in marketing materials, offering documents, etc.

19. For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

- (a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; and
- (b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

Effective timing

This proposed Regulation to be made under the *Ontario Fair Hydro Plan Act, 2017*, if approved, would come into force on the day it is filed with the Registrar of Regulations for Ontario.