

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 Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) 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.

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 Bill 132, *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.

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Yours very truly,

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May 16, 2017

CONFIDENTIAL

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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 Bill 132, *Ontario Fair Hydro Plan Act*, 2017 as tabled in the first reading ("Bill 132") (Appendix A 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 Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. 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 Bill 132 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 Bill 132?

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?



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 Bill 132*:

Section 1 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 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.

Section 24 Variance account to be established, maintained

- (1) 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 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.
- (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.
- (3) 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 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 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 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.
- (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.

Section 34 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 IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral 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]
- Incurred Cost - 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.



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 Bill 132?

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 Bill 132. 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 Bill 132 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. Bill 132 will not permit IESO to collect the IESO deferral 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:

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 <u>previously incurred cost rather than to provide for expected levels of similar future costs.</u> (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.	Bill 132 notes that, • <i>A recording of the balance in the variance account is determinative of the balance as of the time of the recording.</i> • <i>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.</i> • <i>The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.</i> • <i>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.</i> Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the 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

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 <i>Government Business Enterprises</i> 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. <i>Frequency of rate case</i> - 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 IESO deferral recorded in the variance account during the four-year period. - <i>A recording of the balance in the variance account 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)</i> - <i>Right to recover the balance recorded in the variance account.</i> - <i>Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.</i> - 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 recorded in the variance account.	Met

Criteria	Comment	Evaluation
	- <i>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.</i> - <i>Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.</i> <i>Rates are designed to recover incurred costs</i> - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - <i>A recording of the balance in the variance account is determinative of the balance as of the time of the recording (We note that this confirms that there will be no prudence review).</i> - <i>Right to recover the balance recorded in the variance account.</i> - <i>Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.</i> <i>Periods of alternative ratemaking (e.g., rate freezes)</i> 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 IESO deferral recorded in the variance account, including the first four-year period. - <i>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.</i> <i>Costs uncertainty</i> As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	<i>Disallowances of costs</i> The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral 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. Bill 132 notes that: - <i>Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:</i> - o <i>The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.</i> - o <i>IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.</i> 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 need to be continually evaluated throughout the recovery period.	Met



Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 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 regulatory 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 Bill 132 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 Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") 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.



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]



- 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 OPG (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 Bill 132, 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	- Bill 132 states: - <i>OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)</i> - <i>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 19 (1))</i> - <i>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. (Section 19 (3))</i>	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- The Electricity Act will be amended as follows: - <i>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))</i> - <i>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))</i> - OPG 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 27 of Bill 132 states: - <i>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.</i> - <i>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.</i>	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- <i>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.</i> - Based on Bill 132, upon transfer of a specified 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 28 (2)). - 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

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 any 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 Bill 132.	No
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states: - <i>OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)</i> - <i>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. (Section 16 (1))</i> - 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 22 of Bill 132 states: - <i>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.</i>	No



INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- 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 Bill 132, 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 Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (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 months. 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 Bill 132 or review of the final regulations, financing structure and other agreements.



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 deferral 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 Bill 132*:

Section 16 IESO to receive amounts

- (2) 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.
- (4) 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 owner, be 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 amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Section 17 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.

Section 26 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.



- (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 27 Validity of transfer

- (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.
- (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 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.
- (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 29 Investment asset, irrevocable rights and interests

- (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, IESO and other prescribed parties.

Section 30 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 32 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.



- (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 registering 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 Bill 132.

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:

- (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. [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]



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. [...] Earlier 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."



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 PSAS 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
<i>Assets (PS3210.04/ PS1000.36):</i> 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. - <i>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.</i> - <i>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.</i>	Not Met

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. <i>Financial statement concepts (PS1000.37):</i> 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.	- <i>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.</i> - <i>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.</i> - <i>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.</i> 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. - <i>Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.</i> - <i>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.</i> - <i>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.</i> Based on Bill 132, 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 deferral 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.	



Management conclusion

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

The transfer of the regulatory asset 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, if passed, (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. 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
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:

Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

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 a transfer of an investment asset 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.

An Act to enact the Ontario Fair Hydro Plan 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

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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; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“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 de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“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; (“report de la SIERE”)

“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; (“détenteur d’une participation 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; (“montant d’égilisation”)

“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). (“compte d’écart”)

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

Definition

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*.

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, 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 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 the clean energy adjustment 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 registering 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 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, unless the person to whom the security interest has been granted consents otherwise.

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.

Interpretation

(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 or 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.

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 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 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 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 of the *Ontario Fair Hydro Plan Act, 2017* 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, limited 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 *Ontario 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 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; (“consommateur résidentiel protégé contre les frais de distribution”)

“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.