Ontario

LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM

LRC Tracking #: (e.g. REG-8733, OICNA-11556, DLEG-488)
EVista Tracking #: (e.g. SUB-REG-2009-334)

Ministry of Energy

Ontario Fair Hydro Plan Act, 2017

Regulations

Profile at a Glance

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

Proposed Items for Review

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

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy		
TB/MBC		

Deputy Minister ______________________ Date ______________________

Minister ______________________ Date ______________________

s. 1 Proposal and Context

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

- On May 11, 2017, the government introduced Bill 132, the *Fair Hydro Act, 2017* (FHA) which is comprised of two Schedules:
  - Schedule 1 is the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and related amendments to the *Electricity Act, 1998* (EA) and the *Ontario Energy Board Act, 1998* (OEBA); and
  - Schedule 2 includes the electricity social program-related amendments to the *OEBA, 1998*.
- On May 31, 2017 the FHA passed third reading and received Royal Assent on June 1, 2017.
- Under the *OFHPA*, a portion of the Global Adjustment (GA) is being refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system).
- Under the O*FHPA,* which enables GA Refinancing, electricity bills of a typical residential consumer have been reduced by 25 per cent effective July 1, 2017, compared to what they would have been without the initiatives included in Ontario's Fair Hydro Plan. In addition, Schedule 1 provides the authority under which further increases to electricity bills for a typical consumer is to be held to the rate of inflation. Up to 500,000 small businesses and farms are also benefitting from GA refinancing.
- Proposed amendments to O.Reg. 206/17 (General) made under the OFHPA are the next step in implementing GA refinancing. The amendments would, if approved, enable Ontario Power Generation (OPG), as Financial Services Manager (FSM) under the OFHPA, to establish and charge fees, once approved by the Ontario Energy Board (OEB), for the services it provides in connection with the financings contemplated under the OFHPA.
- Additional proposed amendments to O.Reg. 206/17 included in this package are needed to ensure the implementation of GA refinancing satisfies accounting requirements regarding the near-term recovery of "carrying costs" (i.e., fees and interest amounts) under the OFHPA.

A. Financial Service Manager (FSM) Fees Review

1. Amending O. Reg. 206/17 made under the OFHPA:

- The Ministry of Energy is seeking approval to amend O. Reg. 206/17 made under the OFHPA to enable the implementation of GA Refinancing.
- OPG, as FSM under the OFHPA, plays a key role in obtaining the financing necessary to support and implement GA Refinancing as contemplated under the OFHPA.
- The proposed new amendments would, if approved, enable OPG to establish and charge fees, once the fees have been approved by the OEB, in its role as FSM. It would also provide the methodology for the calculation of those fees, and would define the role of the OEB in reviewing and approving those fees.

B. Recovery of "Carrying Costs"

1. Amending O. Reg. 206/17 made under the OFHPA:

- The Ministry of Energy is proposing to amend O. Reg. 206/17 in order to enable the further implementation of Ontario's Fair Hydro Plan under the OFHPA.
- The proposed amendments would, if approved, enable the recovery of amounts related to interest costs and Financial Services Manager fees ("carrying costs") in a manner consistent with accounting requirements of OPG and the Independent Electricity System Operator (IESO).
- While the Ministry of Energy and external stakeholders did consider and develop additional amendments (i.e., to Ontario Regulation 429/04 and 195/17) in order to enable the recovery of carrying costs, external OPG and IESO accounting advisors confirm that the amendments to O. Reg. 429/04 and 195/17 that had been contemplated were not required.

s. 2 Approach and Intended Outcomes

A. FSM Fees Review

1. Amending O. Reg. 206/17 made under the OFHPA:

- The Ministry of Energy is seeking approval to amend O. Reg. 206/17 under the Ontario Fair Hydro Plan Act (*OFHPA*) to enable the implementation of GA Refinancing.

- The proposed amendments, if approved, would enable OPG to go to market in November 2017 as has been intended under the Government's approach to GA refinancing. Any timeline is dependent on the completion of a number of related items including the confirmation of fees methodology, as well as establishing the mechanism for the review and recovery of the FSM fees and financing entity carrying costs (i.e., as set out in the proposed amendments to Ontario Regulation 206/17).

B. Recovery of "Carrying Costs"

1. Amending O. Reg. 206/17 made under the OFHPA:

- The Ministry of Energy is proposing additional amendments to O. Reg. 206/17 in order to enable the implementation of Ontario's Fair Hydro Plan under the OFHPA.

- For the purposes of further implementing the OFHPA, ENERGY has determined an approach utilizing the General Regulation made under the OFHPA, which would establish the authority for the Independent Electricity System Operator (IESO) to pay the amounts related to interest costs and Financial Services Manager fees ("carrying costs") and to ensure that these amounts are not to be recovered from specified consumers, defined under the OFHPA, for the period from July 1, 2017 to April 30, 2021 (i.e., "the inflationary cap period").

- The amounts, referred above, would be recovered through the Clean Energy Adjustments (CEAs) on and after May 1, 2021. Note: This was necessary since without a mechanism for recovery of such carrying costs during the so-called moratorium period, GA Refinancing may not be able to proceed as planned under the OFHPA or might have to proceed at significantly increased costs.

- The overall net impact to specified consumers within the inflationary cap period is expected to be zero.

- The proposed amendments, if approved, would enable OPG to go to market in November 2017 as intended. The timeline is dependent on the completion of a number of related items including the confirmation of the recovery of fees and carrying costs (i.e., as set out in the proposed amendments to Ontario Regulation 206/17).

s. 3 Direction and Urgency

- The direction for the creation and implementation of GA Refinancing programs is found in the March 1, 2017 Cabinet Minute and subsequent public commitments.
- Following the Fair Hydro Act, 2017, receiving Royal Assent on June 1, 2017, the government, the Ontario Power Generation, the IESO, the OEB and legal, financial and energy sector third-party experts have been engaged by OPG/Tory's, IESO, and Government to work to implement GA Refinancing.

- For GA Refinancing to proceed as planned under the legislation, OPG needs to go to market so that the GA deferral can be funded (i.e., so that the regulatory asset can be transferred to the OPG financing entity as set out in legislation). Until such time as this takes place, IESO must manage the GA deferral with its existing resources. Since OEB adjusted rates to reflect Ontario's Fair Hydro Plan (OFHP) reductions partially on May 1, 2017 and fully on July 1, 2017, IESO has been managing a reduction in the GA received from electricity consumers. It is therefore important that OPG proceed to market in a timely fashion.
- The Ministry of Energy understands OPG intends to go to market in November 2017. OPG is currently in preliminary discussions with rating agencies in connection with the timing and other aspects related to the work it is doing as FSM.

s. 4 Impact Assessment and Costs

Government Impact

- The proposed amendments to O. Reg. 206/17 do not involve a direct fiscal impact on the finances of the province.

Stakeholder Impact

- The proposed amendments to O. Reg. 206/17 would impact IESO, in relation to the amounts related to the financing of the carrying costs and OPG FSM fees that they would not be recovering from consumers and which would form part of the variance account for future collection from specified consumers.

Agency Impact

- OEB would be impacted in terms of the requirements for review of OPG FSM fees set out in the amendments to O. Reg. 206/17, and in terms of the determination of rates that will have to be applied to specified consumers consistent with the OFHPA and related regulations.
- OPG as FSM would be able to proceed with the implementation of GA Refinancing as planned.

s. 5 Implementation

- The proposed amending regulation would, if approved, provide further detail on the roles and responsibilities for organizations (i.e., OPG, OEB and IESO) who are responsible for implementing GA Refinancing under OFHPA.
- This includes detail on the roles and responsibilities of the FSM (i.e., OPG), the IESO and the OEB under the OFHPA.

s. 6 Delivery and Results Tracking

- Further work to enable GA Refinancing to be undertaken during the Fall of 2017:
  - OPG to produce Financing Plans that would set out funding obligations for each reference period consistent with the Fair Allocation Amount (FAA);
  - IESO to record deferral amounts in relation to the establishment of the regulatory asset;
  - OPG/financing entity to begin purchasing of investment asset; and
  - OPG to work with lenders and credit rating agencies in establishing the vehicles for securitizing (selling) of investment asset interests.

s.7 Stakeholder Consultations

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

s.8 Other Jurisdictions and Harmonization

- No other jurisdictions have comparable legislative and regulatory frameworks. The U.S. does have examples of securitizations involving single distribution companies, but none of the transactions would have approached the level of complexity involved with the present OFHPA initiative.
- GA Refinancing is not expected to have an impact on any other jurisdiction.

s. 9 Communications

s. 10 Contacts and Appendices

Contacts

	Name	Phone Number
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Appendices

Appendix A: Regulatory Comparison Chart
Appendix B: Proposed Regulations
Appendix C: Communications Snapshot