AMENDMENTS TO O. REG. 206/17: GENERAL

1. **Amend Ontario Regulation 206/17 (General) made under the *Ontario Fair Hydro Plan Act, 2017*. The amendment will come into force on the day it is filed.**

Current Regulation	Proposed Amendment	Rationale for Change
1 (1) In this Regulation, "average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (3); "average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;	**1 (1)** "acceleration of a funding obligation" means, (a) a portion of the principal amount owing in respect of the funding obligation has become due and payable by a financing entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the funding obligation has elected to close-out or terminate the agreement, resulting in an obligation on a financing entity to pay a termination amount, close-out amount or similar amount;.	The proposed amendments to Ontario Regulation 206/17 are needed to define terms required to support the further amendments to O. Reg. 206/17 proposed in this package, which would address accounting and commercial/financial requirements to enable Ontario Power Generation (OPG) in its role as Financial Services Manager (FSM) to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing).

Current Regulation	Proposed Amendment	Rationale for Change
"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation; "derivative agreement" means any derivative agreement, including interest rate swaps and cross-currency swaps and any associated collateral, entered into in connection with or to hedge the exposure of a financing entity under a funding obligation; "derivative payment" means any payment required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements; "finance reserve account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of funding obligations and other finance amounts or for related contingencies; "financing entity expense" includes, (a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other		

Current Regulation	Proposed Amendment	Rationale for Change
amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and (b) any taxes on amounts mentioned in clause (a); “funding cost” means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment; “funding tranche” means an issuance of funding obligations of a particular class or type, all of which have the same terms, but does not include an issuance of a funding obligation to the Financial Services Manager; “governing documents” means, in respect of a funding obligation, the documents governing the terms of the funding obligation or other matters relating to the funding obligation; “market comparable fees” means fees, expressed as an annual percentage rate, charged by full-service managers of funds, including but not limited to securitization vehicles, pension funds and other investment funds, hedge funds or other similar funds, for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,		

Current Regulation	Proposed Amendment	Rationale for Change
(a) the type of services provided, (b) the scope of services provided, (c) the level of services provided, and (d) the dollar amount of assets under management; "market comparable forecast interest rates" means, in relation to a funding tranche, interest rates for a debt obligation that, (a) has a principal amount that is comparable to the principal amount of the funding tranche, (b) has a term that is comparable to the term of the funding tranche, (c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche, (d) has payment rights that are similar to the payment rights of the funding tranche, and (e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche; "maturity date" means, in respect of a funding obligation, the date set out in the governing documents of the funding obligation on which all outstanding principal, interest and other		

Current Regulation	Proposed Amendment	Rationale for Change
amounts outstanding are due and payable; “net annual funding obligation” means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing; “prescribed matters” means matters in relation to the establishment, management and administration of financing entities and the investment asset, including but not limited to matters in relation to, (a) financing entities that are established or that are planned to be established, and (b) funding obligations that have been incurred or that are planned to be incurred by financing entities; “recovery amount” means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations; “redemption amount” means the amount payable by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase; “refinancing amount” means the principal		

Current Regulation	Proposed Amendment	Rationale for Change
amount of a funding obligation incurred by a financing entity in respect of a refinancing; "repayment" means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation; "tax" means a tax, duty, fee, premium, excise, assessment, impost, levy or other charge payable to Her Majesty in right of Ontario, Her Majesty in right of Canada or the government of any other country, province, state, municipality or other political territory and imposed or authorized to be imposed by any law of Ontario, Canada, or any other country, province, state, municipality or other political territory and includes, (a) a tax, duty, fee, premium, excise, assessment, impost, levy or other charge, (i) levied on, measured by or described with respect to income, earnings, gross receipts, profits, capital, capital gains, sales or use, or (ii) referred to as branch tax, net worth tax, alternative tax, minimum tax, goods and services tax, harmonized sales tax, value-added tax, excise tax, ad valorem tax, franchise tax, transfer tax, withholding tax, property tax, surtax, payroll tax,		

Current Regulation	Proposed Amendment	Rationale for Change
employment tax or employer health tax, (b) government pension plan premiums or contributions, social security premiums, workers' compensation premiums and employment or unemployment insurance or compensation premiums and contributions, (c) an amount or charge under Part VI of the Electricity Act, 1998, (d) an instalment in respect of an amount mentioned in clauses (a) to (c), and (e) interest, penalties, fines, additions to tax or other amounts imposed on or in respect of an amount mentioned in clauses (a) to (c); "tax liability" means all tax paid or payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the Act; "tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the Act.		
1(2) For the purposes of subsection 21 (8) of the Act and this Regulation,		The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial

Current Regulation	Proposed Amendment	Rationale for Change
"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps: 1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecast to be reduced as a result of a determination of the Board under Part II of the Act. 2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.	2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the absolute value of the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.	requirements to enable OPG in its role as FSM to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). The proposed amendment to section 1(2) of O. Reg. 206/17 is required to clarify the determination of the "readjustment amount," in order to, in turn, clarify mechanisms underpinning the GA refinancing structure contemplated in the regulation.
5 (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows: 1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts: i. Amounts paid or payable during the period in respect of repayments. ii. Funding costs paid or payable during the period. iii. Redemption amounts paid or payable during the period. iv. Derivative payments required to be	**5(1)** Subject to subsection (2) and section 6.1, the finance amount in respect of a financing entity and a period of time shall be determined as follows:	The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial requirements to enable OPG in its role as FSM to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). Proposed amendments to sections 5(1), paragraph 2 are needed to clarify the operation of mechanisms contemplated in O. Reg. 206/17, including the interaction between financing entity carrying costs and finance amounts as determined by section 5 of the regulation during successive phases of the GA refinancing structure, namely during the four-year inflationary cap period (i.e. June 1, 2017 to May 1, 2021) and the period following the inflationary cap period until the end of the GA

Current Regulation	Proposed Amendment	Rationale for Change
made during the period. v. Amounts deposited, as required under the governing documents of funding obligations, into capital accounts or finance reserve accounts during the period. vi. Financing entity expenses paid or payable during the period. vii. Tax liabilities payable during the period. viii. Amounts paid or payable by or on behalf of a financing entity during the period to any guarantor or surety that made a payment of an amount due and payable under a funding obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5 (2) or (3) of the Act.		refinancing structure.
2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts: i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period. ii. Amounts received during the period in respect of funding rebates and carrying costs.	2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts: i. Amounts withdrawn, as required under the governing documents of funding obligations, from capital accounts or finance reserve accounts during the period. ii.1 Before May 1, 2021, amounts received during the period in respect of funding rebates and carrying costs; ii.2 On and after May 1, 2021, amounts received during the period in respect of	

Current Regulation	Proposed Amendment	Rationale for Change
iii. Recovery amounts received during the period. iv. Refinancing amounts that are applied to repayments during the period. v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements. vi. Tax refunds received during the period. 3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1.	funding rebates; iii. Recovery amounts received during the period. iv. Refinancing amounts that are applied to repayments during the period. v. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements. vi. Tax refunds received during the period.	
6 (3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows: $T = (A - B) + C$ where, T = the true up amount in respect of the period of time, A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,	**6 (3)** Subject to section 6.1, the true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows:	The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial requirements to enable OPG in its role as FSM to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). Proposed amendments to sections 6(3) are needed to clarify the operation of mechanisms contemplated in O. Reg. 206/17.

Current Regulation	Proposed Amendment	Rationale for Change
B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time, C = the amount representing reasonably foreseeable differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.		
N/A	**Acceleration** **6.1 (1)** Despite the acceleration of a funding obligation at any time, the Financial Services Manager shall, for the purposes of determining the clean energy adjustment and the true up amount under section 15 of the Act, determine the estimated finance amount and the true up amount as if no acceleration had occurred. (2) If the application of subsection (1) results in the estimated finance amount being less than what it would have otherwise been, the Financial Services Manager shall add an additional amount to the estimated finance amount determined under subsection (1), which additional amount shall be calculated as follows:	The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial requirements to enable OPG in its role as FSM to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). The proposed amendments to create the new section 6.1 are needed to establish an approach to appropriately manage potential acceleration of debt repayment in the event of a default, including impacts on Clean Energy Adjustments (CEAs) payable by specified consumers as defined in the OFHPA.

Current Regulation	Proposed Amendment	Rationale for Change
	1. Estimate the sum of amounts that constitute the clean energy adjustment for each month during the reference period, determined in accordance with subsection (1). 2. Estimate the sum of amounts that would have, in the absence of subsection (1), constituted the clean energy adjustment for each month during the reference period. 3. Determine the lesser amount of the following: i. The sum estimated under paragraph 2. ii. The fair allocation amount for the reference period. 4. Determine the amount, if any, by which the amount determined under paragraph 3 exceeds the sum estimated under paragraph 1.	
14 (2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan: 1. The Financial Services Manager should, i. seek the best terms available at the time of incurrence of a funding obligation, having regard to other financing transactions of the size and type contemplated by the		The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial requirements to enable OPG in its role as FSM to proceed with the next phase of implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). The proposed addition under section 14(2) is needed to clarify the mechanism for the recovery of financing entity carrying costs during the period after May 1, 2021, in which

Current Regulation	Proposed Amendment	Rationale for Change
Financing Plan, ii. apply the principal proceeds of a funding obligation for the purpose of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests, iii. consider the interests of specified consumers with respect to stable and predictable electricity rates, iv. act as any reasonably prudent financial services manager would act in similar circumstances, and v. deal with related parties on arm's length terms. 2. The Financing Plan should, i. identify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside of Canada, ii. describe how recovery amounts will be applied to funding obligations over time, iii. address the capitalization of proposed financing entities, iv. describe strategies to mitigate risk, including currency and interest rate hedging measures, if applicable,		the FAA, as defined under the OFHPA, remains less than the amount of such carrying costs.

Current Regulation	Proposed Amendment	Rationale for Change
v. seek to minimize tax consequences associated with the incurrence of a funding obligation, and vi. articulate the principles by which the Financial Services Manager will make decisions regarding the following: A. Interest rates. B. The term to maturity of funding obligations. C. Refinancing. D. Deposits to and withdrawals from reserve accounts. E. Indemnifications. F. Fees.	3. Subject to subsection (2.1), if the fair allocation amount in respect of the reference period is either a negative amount or an amount that is less than the carrying costs of financing entities during the reference period, the Financial Services Manager may include all or a portion of the carrying costs in clean energy adjustments to be collected from specified consumers for the reference period.	
N/A	**14 (2.1)** Paragraph 3 of subsection (2) does not apply in respect of the carrying costs of financing entities that are paid by the IESO under section 9.1.	The proposed amendments to Ontario Regulation 206/17 are needed to address accounting and commercial/financial requirements to enable OPG in its role as FSM to proceed with the next phase of

Current Regulation	Proposed Amendment	Rationale for Change
		implementation of GA Refinancing (i.e., OPG proceeding to market to secure financing). The proposed amendment to create the new subsection 14(2.1) is needed to clarify the interaction of regulatory mechanisms for the recovery of financing entity carrying costs during successive phases of the GA refinancing structure, namely during the four-year inflationary cap period (i.e. June 1, 2017 to May 1, 2021) and the following period during which the Fair Allocation Amount (FAA), as defined under the OFHPA, remains less than the amount of the carrying costs.