**Version 4**

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# A PROPOSAL TO CREATE REGULATION

made under the

# ONTARIO FAIR HYDRO PLAN ACT, 2017

# GENERAL

## CONTENTS

DEFINITIONS

**Definitions**

**1.** (1) In this Regulation,

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

"financing entity expenses" include fees, charges, costs, taxes, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act and includes fees charged by the Financial Services Manager;

"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 the funding obligation or for related contingencies;

"funding cost" means interest, commitment fees or other financing charge payable by or on behalf of a financing entity [as required under the governing documents of?] funding obligations, including any up-front or periodic amount payable under a derivative [agreement?] entered into by or on behalf of the financing entity to hedge its interest rate or currency exposures or any other form of derivative [agreement?];

"governing documents" means, in respect of a funding obligation, the documents governing the terms of the agreement or other matters relating to the funding obligation;

"maturity date" means, in respect of a funding obligation, the date occurring after all scheduled payment dates in respect of the funding obligation, on which all outstanding principal, interest and other amounts payable under the governing documents of the funding obligation are payable;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations, including any amounts received under an agreement in respect of interest rates or currency or any other form of derivative agreement, but not including the proceeds of the issuance of funding obligations;

"redemption amount" means the amount payable [under the governing documents of a funding obligation?] by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the redemption, prepayment or repurchase;

"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, which may include payment of an amount payable on the termination, unwinding or amendment of any related interest rate, currency or other form of derivative agreement;

"scheduled payment date" means, in respect of a funding obligation, a regular date, set out in the governing documents of the funding obligation, on which a payment [repayment?] is scheduled;

"tax" means [to be completed];

"tax liability" means all tax 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 authorized or permitted under the Act, including,

(a) activities related to a financing entity, including its creation, maintenance or reorganization,

(b) activities related to an investment interest and related assets and liabilities, including the acquisition, holding, enforcement or disposition of an investment interest and activities relating to bank accounts to hold reserves and payments received,

(c) activities related to a funding obligation, including its incurrence, performance, redemption, repayment or disposition, and

(d) activities related to an agreement, including the entering into, performance, enforcement, termination or disposition of an agreement in respect of interest rates or currency or any other form of derivative agreement;

"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 its engagement in any activity authorized or permitted under the Act, including activities described in clauses (a) to (d) of the definition of "tax liability".

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

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

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecasted to be reduced as a result of a determination of the Board under Part II of the Act.

2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

**Funding obligation**

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

1. A refinancing.

2. Any amount payable under interest rate swaps or cross-currency swaps or other derivative agreements, including any bonds or loans to finance collateral obligations under the swaps or derivative agreements.

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

(2) Funding obligations, including the types of amounts set out in paragraphs 1 to 3 of subsection (1), include principal , interest, fees and other amounts owing in respect of the amounts.

**Refinancing**

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

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.

3. The proceeds are applied as designated.

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

CLEAN ENERGY ADJUSTMENT

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

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

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

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

**Finance amount**

**5.** (1) Subject to subsection (2), the finance amount in respect of a 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 payable during the period in respect of repayments.

   ii. Funding costs payable during the period.

   iii. Redemption amounts payable during the period.

   iv. Amounts required, under the governing documents of funding obligations, to be deposited into capital accounts or finance reserve accounts during the period.

   v. Financing entity expenses payable during the period.

   vi. Tax liabilities payable during the period.

2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

   i. Amounts required, under the governing documents of funding obligations, to be withdrawn from capital accounts or finance reserve accounts during the period.

   ii. Amounts payable during the period in respect of funding rebates.

   iii. Recovery amounts received during the period.

iv. The amount of any debt incurred during the period [as or in relation to?] a refinancing.

v. Tax refunds received during the period.

3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1.

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

1. The determination shall be made by applying a cash basis accounting method.

2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received or made available during that period of time.

3. If the determination is in respect of a future period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received or made available during that period of time.

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash finance amounts.

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

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period shall be deemed to be a tax refund of the financing entity in the first reference period commencing after the particular tax reporting period.

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period exceeds the estimated taxes shall be deemed to be a tax

liability of the financing entity in the first reference period commencing after the particular tax reporting period.

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply once there has been a final determination with respect to the tax liability of the finance entity in respect of the particular tax reporting period:

   i. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is decreased shall be deemed to be a tax refund of the financing entity for the first reference period commencing after the final determination.

   ii. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is increased shall be deemed to be a tax liability of the financing entity for the first reference period commencing after the final determination.

(4) For the purposes of paragraph 4 of subsection (3),

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

**Determining true-up amount**

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

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

(a) the Financial Services Manager reasonably forecasts that there will be a material shortfall in the collection of the clean energy adjustment relative to the estimated finance amount payable in respect of a reference period; and

(b) the Board has determined rates under subsection 15 (4) of the Act in respect of the reference period.

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

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

Where,

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

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

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

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

(4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (3), have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

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

**Notification to Board**

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

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

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

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

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

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

(5) During the period of time mentioned in subsection (2), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager determines the true-up amount in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of each of the months remaining in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination [as soon as possible?].

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

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

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

(2) For the purposes of subsection (1.1), the forecasted electricity consumption of specified consumers shall be the forecasted electricity consumption as provided to the Board by the IESO.

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

(4) If notice of a redetermination is provided under subsection 7 (5), the rate shall be determined by the Board so that the rate takes effect,

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

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

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

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

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts in accordance with the requirements of the agreements relating to the sale of the investment interests to the financing entities and agreements relating to the funding obligations.

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

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

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

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

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



FAIR ALLOCATION AMOUNT

**Prescribed period, amount**

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

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

$$A = B - C$$

Where,

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

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

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

**Determination of estimated financing costs**

**12.** (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following amounts that would become payable during the reference period:

1. Estimated funding costs.

2. Estimated financing entity expenses.

3. Estimated funding rebates.

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

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is repaid [paid?] by applying funds expected to be available to it under the Financing Plan after all other <u>forecasted finance amounts</u> for the reference period have been <u>paid or provided for.</u>

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

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 3 of subsection (1), calculate the following amounts and include them in the determination of the estimated financing costs in respect of the reference period:

1. A portion of the readjustment amount that should be attributed to the reference period.

2. The financing costs that should be attributed to the adjustment amount.

(5) For the purposes of paragraph 1 of subsection (4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered proportionally over the remaining reference periods.

**Minister's considerations**

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

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

FINANCING PLAN

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

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

1. The determination of the IESO deferral for future months.
2. Future transfers of specified portions of the regulatory asset.
3. The maturities of funding obligations.
4. Cash flow requirements to meet contractual obligations associated with funding obligations.
5. The future availability of refinancings and redemption opportunities.
6. Liquidity terms and conditions.
7. The future availability of currency and interest rate hedging facilities for the purposes of managing currency and interest rate risks that may be associated with funding obligations.

8. Interest rates and financing entity expenses.

9. Future availability of capital markets, including markets outside of Canada, in which funding obligations may be incurred.

10. Fees charged by the Financial Services Manager.

11. The need for and implementation of financing reserve accounts and capital accounts.

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

1. Funding obligations shall be incurred on the best terms available at the time of incurrence for a financing transaction of the size and type contemplated by the Financing Plan.

2. The Financing Plan shall seek to create a stable platform to acquire and finance investment interests.

3. The Financing Plan shall specify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside Canada if considered by the Financial Services Manger to be appropriate in the circumstances.

4. The Financing Plan shall specify the basis upon which the Financial Services Manager is to select the currency of payments under the funding obligations and shall address measures to be taken to mitigate currency risk, including hedging transactions and adoption of minimum and maximum coverage levels, having regard to the availability of related derivatives with notional amounts corresponding to the repayment and maturity profile of the funding obligations.

5. The Financing Plan shall describe the basis upon which recovery amounts are to be applied.

6. Principal proceeds of a funding obligation must only be applied for the purposes of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests.

7. The Financing Plan shall set out the basis upon which the Financial Services Manager is to select the interest rates for the incurrence of funding obligations.

8. Subject to subsection (2.1), the Financing Plan shall set out the basis upon which the Financial Services Manager is to select the term to maturity of funding obligations.

9. The Financing Plan shall address the need for refinancing.

10. The Financing Plan shall restrict the Financial Services Manager from making any election or decision, including election or decision to redeem any funding obligations, if the consequence would be that the clean energy adjustment would exceed the sum of the fair allocation amount and any readjustment amount in respect of a reference period.

11. The Financing Plan shall address the incurrence of funding obligations for the provision of deposits required as described in subparagraph 1 iv of subsection 5 (1).

12. Any funding obligation that by its terms may require a payment to be made by the financing entity during a reference period shall limit the amount of the payment to a fixed or determinable amount, which amount shall be deemed to be a finance amount for the purposes of paragraph 1 of subsection 21 (3) of the Act.

13. The Financing Plan shall set out measures to realign costs and finance amounts as a result of any change in the calculation of fair allocation amounts.

14. The Financial Services Manager shall act as any reasonably prudent financial services manager would act in similar circumstances.

15. The Financing Plan shall describe the basis upon which the Financial Services Manager or its agent is to negotiate [in respect of?] and settle [in respect of?] finance amounts.

16. The Financing Plan shall describe the timing and basis upon which deposits described in subparagraph 1 iv of subsection 5 (1) and withdrawals described in subparagraph 2 i of subsection 5 (1) may be made and shall balance the need to maintain reserves in order to provide for marketable securities with the costs of holding such reserves, including on account of any potential income tax liabilities of the investment interest owners.

17. The Financing Plan shall describe the requirements applicable to any financing entity that is to purchase an investment interest, including proposed capitalization, governance and restrictions on their powers and activities, as well as structural considerations in order to minimize risk and costs, including any tax liabilities that may be recovered as finance amounts.

18. The Financing Plan shall describe the basis upon which fees, charges, financing entity expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Manager or agents and other service providers to the financing entities may be determined, allocated and paid.

19. Any contract to be entered into by the Financial Services Manager on behalf of a financing entity that provides for a payment to be made to or for the benefit of the Financial Services Manager or any person with whom the Financial Services Manager does not deal at arms' length shall demonstrably reflect on arms' length terms and conditions.

**Rule, para. 8 of subs. (2),**

(2.1) For the purposes of paragraph 8 of subsection (2), any repayments required to be made under the terms of a funding obligation, other than an obligation incurred for the purposes of refinancing to prudently and cost-effectively manage debt, shall not obligate any financing entity to repay an amount in relation to a reference period that would have the effect of the Financing Plan permitting incurrences of funding obligations payable in the reference period that would exceed the fair allocation amount attributable to the reference period.

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

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

THE REGULATORY ASSET

**Determination of IESO deferral**

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

1. The difference between the following amounts:

   i. The sum of all amounts that would have been payable in the month, if rates had not been determined under Part II of the Act, by electricity vendors and specified consumers under the *Electricity Act, 1998* and the market rules made under section 32 of that Act.

   ii. The sum of all amounts payable in the same month by specified consumers to electricity vendors as a result of the rates determined under sections 7 and 8 of the Act.

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

**Adjustments that may be recorded by IESO**

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

1. Any amounts the IESO pays to a financing entity in respect of a reference period [in respect of which no clean energy adjustment is payable?].

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* [that remain to be cleared?] [during the period beginning on May 1, 2017 and ending on June 1, 2017?].

FEES

**Fees, subs. 19 (3) of the Act**

**17.** (1) For the purposes of this section,

"incremental annual funding obligation" means the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in a calendar year.

(2) For the purposes of subsection 19 (3) of the Act, the Financial Services Manager may establish fees and charge the fees to financing entities in relation to the following matters:

1. The services provided by the Financial Services Manager to financing entities, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.

2. The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.

(3) The fees mentioned in subsection (1) may include both a fixed fee and a variable fee based on performance [of what?].

(4) The fixed fee shall be equal to the cost of services provided to a financing entity plus a reasonable rate of return.

(5) Subject to subsection (6), the variable fee to be charged in respect of a calendar year shall be calculated in accordance with the following formula:

$$A \times (B - C) \times D$$

Where,

A = the principal amount of the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in the year,

B = the forecasted interest rate for "A", as determined by the Financial Services Manager on or before the end of the calendar year prior to the calendar year in respect of which the fee is being determined and based on the term of the aggregate,

C = the weighted average interest rate for “A”,

D = 5 per cent or such other per cent that is approved by the Board.

(6) The variable fee payable in respect of a calendar year shall not be,

(a) more than 1 per cent of the [value of D] multiplied by A; or

(b) less than -1 per cent of the [value of D] multiplied by A.

(7) If the variable fee is a negative amount, the amount shall be deducted from the fixed fee payable in the following calendar year in twelve equal monthly instalments.

(8) When submitting proposed fees to the Board, the Financial Services Manager shall provide the following:

1. The methodology that the Financial Services Manager has used to calculate the proposed fixed and variable fees.

2. The methodology that the Financial Services Manager has used to benchmark the proposed variable fee.

3. The period of time during which the Financial Services Manager proposes to charge the proposed fees.

4. The identity of the financing entities that would be liable to pay the proposed fees.

5. Such other information as the Board may require.

(9) This section applies with necessary modifications in respect of a proposal by the Financial Services Manager to amend fees.

**Board approval of fees, subs. 19 (4) of the Act**

**18.** (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.

(2) The Financial Services Manager may, from time to time but not more than once in any twelve month period, submit proposed amendments to its fees to the Board.

(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 120 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations [which may include recommendations regarding the methodology used to calculate the fees?].

MISCELLANEOUS

**Investment asset, s. 29**

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

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

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

**Appointment of agent, invoicing or collection**

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

**Disclosure in marketing materials, offering documents, etc.**

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

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; or

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

**Commencement**

**22. This Regulation comes into force on the day it is filed.**