May 2, 2017

# OPG ACCOUNTING CONSIDERATIONS OF ONTARIO FAIR HYDRO PLAN

***Purpose:***

The purpose of this document is to summarize the preliminary views of Ontario Power Generation (OPG) on the ability for OPG to consolidate the Financing Entity Trust associated with the Ontario Fair Hydro Plan.

This memo is assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. Note that this assessment is preliminary pending the finalization of the Legislation, the Trust indentures, Regulations, financing structure and other detailed terms, and all related documentary evidence. This assessment will be updated once final documentation is available.

***Background:***

On March 2, 2017, the Province of Ontario (the Province) announced Ontario's Fair Hydro Plan (the Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Plan, the Province has proposed financing a portion of the Global Adjustment costs over a longer time period for Regulated Price Plan eligible customers (e.g., residential, farm, small businesses).

On April 13th, the Province requested that OPG consider administering the financing associated with the Plan, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the related financing activities. To undertake this financing, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements.

***Assumptions made to perform accounting analysis which are not yet addressed in Legislation – it is expected that these matters will be addressed in Regulations, Trust documents, and various other agreements:***

- The Regulation must require interest, carrying and administrative costs to be paid to the Trust in cash on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
- The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.
- The Minister of Energy will have the ability to replace the Financial Services Manger (OPG) if there is a failure to perform. There will be a bifurcation of roles where the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward. The ability for the Minister of Energy to remove OPG as the Financial Services Manager should not impact the recoverability of existing intangible assets.

- The calculation of the Fair Allocation Amount will be performed by the Minister of Energy.
- OPG has the ability to appoint and remove the Trustee (or Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust.
- Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error.
- The margin on the interest rates associated with Tranche B and Tranche C which will be recovered from the ratepayers will be reflective of the risk profile of the debt and the associated market terms.
- The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.
- The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.
- In the event that a different Financial Services Manager is appointed by the Minister of Energy, the IESO is required to continue to make cash payments for interest to the Trust for the existing debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.
- All other items as indicated in *Appendix A.*

***Accounting Analysis:***

In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the Trust, or whether it has the ability to affect the returns of the Trust through its power over the Trust. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity.

In order to consolidate the Trust, OPG must be able to demonstrate that it controls the Trust.

***Control***

*An investor controls an investee if and only if the investor has all the following:*

*a) power over the investee;*
*b) exposure, or rights, to variable returns from its involvement with the investee; and*
c) *the ability to use its power over the investee to affect the amount of the investor's returns.* [IFRS 10, paragraph 7]

**Purpose and design of the investee**
*When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities.* [IFRS 10, paragraph B5]

| Criteria | Analysis |
|---|---|
| Purpose and design of the Trust | The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. |

| **Purpose and design of the investee**<br>*When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities.* [IFRS 10, paragraph B5] | |
|---|---|
| | |
| Relevant activities of the Trust and how decisions are made about those activities | <u>Relevant activities:</u><br><br>The relevant activities of the Trust are:<br><br>• To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs.<br>• To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing<br>• To provide funding to the IESO in return for an interest in a future cash flow stream<br>• To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding.<br>• To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation<br>• To finance the requirements associated with the short-fall amount<br>• To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing<br><br><u>Financing Plan (Legislation: Part IV – Implementation)</u><br><br>• OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan'.<br>• The Financial Services Manager (i.e. the Trust) shall provide the Financing Plan to the Minister. The Financing Plan is expected to follow Principles as stipulated in the Legislation which indicate that the assumptions must be reasonable and that the Trust has the power to determine what is reasonable and cost-effective. The Trust makes all the decisions in determining the relevant activities as listed above.<br>• OPG can amend the Financing Plan at any time without the approval of the Minister.<br><br><u>Fair Allocation Amount (Legislation: Part IV – Implementation)</u><br><br>• The 'Fair Allocation Amount' ("FAA") is the amount of the deferral for the reference period and includes finance amounts. The current Legislation dictates that the Minister of Energy is to calculate the FAA.<br>• This does not impact OPG's relevant activities in the Trust as OPG's variable returns are based on financing decisions which are not dictated by the FAA. OPG can choose to accept or reject the purchase of the intangible asset which is based on the Fair Allocation Amount. |

| **Purpose and design of the investee**<br>*When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities.* [IFRS 10, paragraph B5] | |
|---|---|
| | <u>Decisions made and voting rights of the Trust:</u><br><br>OPG has the ability to appoint and remove the Trustee (and if applicable Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust. **[NOT YET ADDRESSED IN CURRENT LEGISLATION]**<br><br>*Voting of members:*<br><br>Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG.<br><br><u>Termination Rights</u><br><br>OPG cannot be removed from its role in the Trust. The Province has the right to remove OPG as the 'Financial Services Manager' for failure to perform. This will not impact debt that has already been issued for which OPG is already managing through the Trust or the recoverability of existing intangible assets. It the right is exercised, it serves to reduce or eliminate the scope of new business activities of the Trust but it does not affect OPG's ability to control the Trust. Should a new Financial Services Manager be appointed, a separate assessment would be made as to which party if any would control it. |
| **Assessment** | The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities. |

| **Power over the investee** | |
|---|---|
| **Criteria** | **Analysis** |
| Identify whether OPG's rights give it the current ability to direct the relevant activities of the Trust (Substantive rights) | See above for relevant activities of the Trust. |
| **Assessment** | OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV. |

| **Exposure or rights to variable returns** | |
|---|---|
| **Criteria** | **Analysis** |
| *Dividends, other distributions of economic benefits from an investee and changes in the value of the investor's investment in that investee*<br>[IFRS 10, paragraph B57(a)] | OPG is expected to realize management fees from its activities with the Trust. |
| *Remuneration for servicing an investee's assets or liabilities, fees and exposure to loss from providing credit or liquidity support, residual interests in the investee's assets and liabilities on liquidation of that investee, tax benefits, and access to future liquidity that an investor has from its involvement with an investee*<br>[IFRS 10, paragraph B57(b)] | **[NOT YET ADDRESSED IN CURRENT LEGISLATION]**<br><br>OPG has exposure and rights to variable returns from the Trust in the form of the following:<br><br>• The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.<br>• OPG, through ownership of the most subordinated debt, is exposed to risk of non-collection. Given that the program is expected to run until 2047, this 30 year time period results in uncertainty about the future collection of OPG's amount at risk. OPG and the OFA (5% out of 44% contribution) would be the last parties to get paid in the event that the program stops running due to a change in Government, if electricity demand is not high enough to allow for collection from ratepayers in a timely manner, etc. The end date of 2047 that is prescribed in the Legislation results in uncertainty toward whether this program will continue and whether OPG will have collected its amount at risk at that time.<br>• In the event that there is a market disruption whereby OPG is not able to obtain debt from the financial markets (e.g. due to a recession), the Province will provide funding in the event that OPG wishes to continue purchasing intangible assets from the IESO. This is considered to be a protective right as it does not impact the relevant activities of the Trust, but is designed to protect both parties and does not give either party more or less power over the Trust. It is designed to allow OPG to keep purchasing intangible assets if it wishes to.<br>• Protective rights are typically held to prohibit fundamental changes in the activities of an investee that the holder does not agree with and usually apply only in exceptional circumstances (i.e., upon a contingent event). This is true for this right as it is only applicable if there is a market disruption and the Trust is not able to obtain financing from external markets. Further, the fundamental activities of the Trust would change if it were not able to obtain financing from external markets. |
| *Returns that are not available to* | • OPG will have synergistic benefits from combining operating |

| **Exposure or rights to variable returns** | |
|---|---|
| *other interest holders. For example, an investor might use its assets in combination with the assets of the investee, such as combining operating functions to achieve economies of scale, cost savings, sourcing scarce products, gaining access to proprietary knowledge or limiting some operations or assets, to enhance the value of the investor's other assets*<br>[IFRS 10, paragraph B57 (c)] | functions with the Trust given its extensive knowledge on the market and current regulatory knowledge. |
| | |
| **Assessment** | To determine which party is the most 'at risk' in the event that the loans default, expected loss rates were obtained from Moody's and DBRS.<br><br>Using the *Moody's Investors Service – Loss Given Default for Speculative Grade Companies* dated December 4, 2015, the 4-year Idealized Expected Loss ranges from 0.00% for a triple A rated bond to 0.30% for an A3 rated bond.<br><br>DBRS Expected Loss Ratings give an indication of the expected loss of a loan portfolio. As per a November 2016 publication, the 10-year expected loss rates range from 0.1% for a AAA rated bond to 1.7% for an A (low) rated bond.<br><br>Given that OPG's subordinated debt is equal to 5% of the total debt, which is higher than the default rates above, 100% of the risk is with both OPG and the OFA since they are the last parties to get paid should there be any default with the debt.<br><br>OPG is also exposed to variable returns from the Trust from its performance on decisions made on financing alternatives, duration, and the strategy to minimize financing costs through the variable fee component of the management fee.<br><br>Therefore, OPG has the exposure to variable returns from the Trust. |

| **Ability to use power to affect returns** | |
|---|---|
| **Criteria** | **Analysis** |
| Ability of investor to use its power to affect the investor's returns from its involvement with the investee | OPG needs to have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust<br><br>OPG has the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component. |

| **Ability to use power to affect returns** | |
|---|---|
| | Further, the Trust's ability to use its power to affect returns is in a manner that is consistent with being a principal. See *Appendix B* for Principal-Agent analysis. |
| | |
| **Assessment** | OPG has the ability to use its power to affect returns of the Trust. |

**Conclusion:**

Based on the current **[May 1, 2017]** draft of the legislation, the conditions to ensure the ability of OPG to consolidate the operations of the Trust have not fully been reflected. As noted in Appendix A, several conditions must be evident in the Regulations, Trust documents, and various other agreements which are not yet drafted and therefore not yet available for our review and assessment. In OPG's assessment, while no current clause of the Legislation would hamper the ability to effect a consolidation within OPG Inc.'s financial statements, there are several key conditions for consolidation that are currently not present within the Legislation. On the assumption that future Regulations, Trust documents and various other agreements fully capture these operating conditions, and that no new conditions that would conflict with OPG's control of the trust are introduced, OPG believes that consolidation of the Trust is supportable.

## APPENDIX A:

### Terms necessary for OPG to consolidate the Global Adjustment Trust

*Note that these are assessed against the Legislation proposal 'Ontario Fair Hydro Plan Act, 2017, if enacted V6' sent by Carolyn Calwell on May 1, 2017. These are subject to change as subsequent drafts of the Legislation are issued.*

**Legend:**

**✓ - Addressed by the Legislation drafted May 1, 2017**

**RT – Not addressed by Legislation and must be addressed in Regulations, Trust Documentation or various other agreements**

**Ω - Will not be addressed in Legislation/Regulations or Trust but is the intended plan**

| Issue | No. | Requirements |
|---|---|---|
| Directive | 1 ✓ | The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise.<br><br>***MET - The Province will not direct OPG to participate in the Fair Hydro Plan. A letter was issued from the Minister of Energy to OPG on April 13th requesting OPG's involvement in the implementation of the Fair Hydro Plan. OPG's Board Chair responded to the Minister on April 18th committing OPG to work with the IESO and OEB to develop a plan. OPG will have the option to prepare, implement and amend a financing plan (in accordance with principles set out in legislation) and propose the adoption of such plan as the 'Financing Plan'. OPG will have the right to withdraw its financing plan at any time.*** |
| Trust | 2 RT | The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot').<br><br>***OPG will be the sole unit holder of the Trust. All decisions over the relevant activities of the Trust (as described above) will be made by OPG.*** |
| | 3 RT | OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the Trust.<br><br>***OPG will be the sole unit holder of the Trust. The Province will be involved in the Board of Trustees, but OPG is expected to have the majority vote.*** |

<table>
<tr><th>Issue</th><th>No.</th><th>Requirements</th></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td></td><td>4<br>**RT**</td><td>The Province cannot have the right to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust.<br><br>***OPG will have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG will have the power to establish operating and capital budgets of the Trust with no veto right by the Province.***</td></tr>
<tr><td></td><td>5<br>**RT**</td><td>OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.<br><br>***The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.***</td></tr>
<tr><td></td><td>6<br>**Ω**</td><td>The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:<br>a. The Trust<br>b. The most subordinated debt of the Trust<br><br>***See below for financing structure.***<br><br>
<table>
<tr><th></th><th>Risk Profile</th><th>Source</th><th>% of Total Funding Requirement</th></tr>
<tr><td>Tranche A Senior Debt</td><td>the least risky</td><td>Capital Markets</td><td>51%</td></tr>
<tr><td>Tranche B Sub Debt</td><td>In between A&C</td><td>OPG via OEFC</td><td>39%</td></tr>
<tr><td rowspan="2">Tranche C Sub Debt</td><td rowspan="2">the most risky</td><td>OPG via OEFC</td><td>5%</td></tr>
<tr><td>OPG via Capital Markets</td><td>5%</td></tr>
</table>
</td></tr>
<tr><td></td><td>7<br>**Ω**</td><td>OPG must own at least 50% of the most subordinated debt and must be no less than 5% of the debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.<br><br>***See chart in Point 6 above***.</td></tr>
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| Issue | No. | Requirements |
|---|---|---|
| | | |
| | 8<br>**RT** | OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:<br><br>a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks<br><br>***The cash flow from the restructured asset will include interest income that is equal to the interest expense (i.e. interest expense is passed back to the ratepayers). The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.*** |
| | ✓ | b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset<br><br>***OPG will determine the financing strategy through the proposal of its 'Financing Plan'. The 'Financing Plan' will only be required to follow general Parameters and Principles as set forth in the Legislation but funding decisions will be made entirely by OPG. The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.*** |
| | **Ω** | c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.<br><br>***OPG's portion of the most subordinated debt will be limited to a reasonable level. If it is determined that OPG's portion is not at a reasonable level, OPG has the option to withdraw its Financing Plan.*** |
| | **RT** | c. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. |

| Issue | No. | Requirements |
|---|---|---|
| | | ***OPG will be able to capture the pricing difference between cost of financing and benchmark for interest through the performance fee which is described in point 5) above and the 'Exposure or rights to variable returns' section above.*** |
| | Ω | d. OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.<br><br>***OPG will be involved in the Trust documentation.*** |
| | RT | Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), OFA may provide bridge financing beyond the designated percentage for a defined period.<br><br>***This will be structured through a separate indemnification agreement. This is not expected to impact consolidation of the Trust because this is seen as a protective right which is only in affect when a contingency arises and not as a result of the relevant activities of the Trust.*** |
| Legislation | 9 ✓ | The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.<br><br>***Under Part III – Clean Energy Adjustment – Section 8.3 Terms, of the Legislation, the expectation is that the Legislation will allow for interest payments to be paid to the Trust on a monthly basis in cash. The Trust will not accrue interest to the current intangible asset balances but this interest amount could form part of future intangible assets that are purchased from the IESO.*** |
| | 10 RT | The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee.<br><br>**The Regulations are expected to dictate the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:**<br><br>• **25% Reduction (June 1, 2017) where the average bill will** |

| Issue | No. | Requirements |
|---|---|---|
| | | **reduce by 25% including of HST and social programs noted above**<br>• **Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation**<br>• **Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity.**<br>• **Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.**<br><br>**OPG will determine the manner in which the intangible asset, once purchased from the IESO will be collected and the period of collection.**<br><br>**The recoverability of the existing intangible assets cannot be impacted by the Province.**<br><br>**Although the Province may determine the Principles and Parameters around the 'Fair Allocation Plan', it does not impact the activities of the Trust once OPG has purchased the intangible asset.** |
| | 11 RT | The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount.<br><br>**See above.** |
| | 12 RT | The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible.<br><br>***Trust Indenture and Regulations still outstanding.*** |

**APPENDIX B:**

**Link between power and returns: principal-agency situations**

The third criterion for having control is that the investor must have the ability to use its power over the investee to affect the amount of the investor's returns. When decision-making rights have been delegated or are being held for the benefit of others, it is necessary to assess whether the decision-maker is a principal or an agent to determine whether it has control. This is because if the decision-maker has been delegated rights that give it power, the decision-maker must assess whether those rights give it power for its own benefit, or merely power for the benefit of others. As an agent cannot have control over the investee, it does not consolidate the investee. A principal may have control over the investee, and if so, would consolidate the investee.

A decision maker shall consider the overall relationship between itself, the investee being managed and other parties involved with the investee, in particular all the factors below, in determining whether it is an agent:

a) the scope of its decision-making authority over the investee

   *As discussed above, OPG has decision-making authority over the Trust and its relevant activities. The Province has no right to determine what sort of funding decisions OPG should make to fund the intangible assets that they will purchase and OPG can choose not to purchase future intangible asset purchases.*
   *Terms and Conditions to support this point:* 1, 2, 3, 4, 5

b) the rights held by other parties (paragraphs B64–B67).

   *There are no substantive removal rights held by the Province for debt that already exists in the Trust.*

   *Terms and Conditions to support this point:* 3, 4, 5

c) the remuneration to which it is entitled in accordance with the remuneration agreement(s) (paragraphs B68–B70).

   *See section on 'Exposure or rights to variable returns' above.*

   *Terms and Conditions to support this point:* 6, 7, 8, 9

d) the decision maker's exposure to variability of returns from other interests that it holds in the investee (paragraphs B71 and B72).

   *See section on 'Exposure or rights to variable returns' above.*

   OPG will receive a 44% equity injection from the Province of Ontario, indirectly through the Ontario Financing Authority. Given that currently, the majority (currently 51%) of the Trust debt will be from External Markets and not the Province, it can be argued that OPG did not receive the majority of its interest in the investee as a contribution or loan from the Province. This shows that OPG is a principal, not a de-facto agent.

   *Terms and Conditions to support this point:* 6, 7, 8, 9

*Conclusion:* OPG is not an agent for the Province as the arrangement does not provide for the Province to directly absorb any variability associated with the structure. If the Province decides to intervene at a later date due to evolving market conditions, an assessment would be made at that future date.

*Analysis on whether OPG is an agent for ratepayers*

OPG is not an agent for the ratepayers because OPG has substantive exposure to risk of loss of its own funds. The ratepayers do not have any of their own funds in any of the subordinated tranches and further, no decision making authority is delegated to the ratepayers relating to the relevant activities of the Trust.

*Analysis on whether OPG is an agent for the IESO*

OPG is not an agent of the IESO because the IESO faces no continuing risk of loss after sale of the intangible asset to OPG.