Subsequent adjustments

7xx. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for specified consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers.

Limitation

(2) Any prescribed methodology to be applied in respect of a period after June 30, 2021 shall have regard to the following:

1. The fair allocation amount in respect of the period.
2. Any clean energy adjustments payable in respect of the period.
3. Such other matters as may be prescribed.

Sub-metering

7.1xx (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 6.3xx or section 7xx applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

KPMG Memo

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:
    i. The estimated finance amount in respect of the reference period.
    ii. The true up amount in respect of the reference period.
2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(3) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.
2. The method for determining the true up amount should take into account historical and reasonably foreseeable,
    i. differences between the estimated and actual finance amount for the applicable reference period,
    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and
    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).
2. Payments made by specified consumers directly to IESO as electricity vendor under subsection 8xx (1).
3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(4) All amounts received by IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners, be received and held in trust by IESO for the investment interest owners.

IESO to remit

(5) IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referred to in subsection (2), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (5) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees, etc.

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred, the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of rates determined under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 10xx or any funding obligations that have already been incurred before the change.

KPMG Memo

Information

(7) The Minister, IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.
2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.
3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation

(4) In respect of each reference period from May 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(2) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

20xx. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by IESO in accordance with the regulations.

Same, retrospective amounts

(1.1) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by IESO on or after May 1, 2017 and before the day this Act comes into force.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) IESO shall record the following in the variance account:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(3) Subject to the correction of any obvious error by IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

21xx. (1) Effective May 1, 2017, IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Limitation

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

23xx. (1) A transfer of a specified portion of the regulatory asset under section 22xx constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 22xx, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The transfer of a specified portion of the regulatory asset under section 22x creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(1.1) Upon transfer of a specified portion of the regulatory asset under section 22xx to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owners to collect and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

KPMG Memo

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, a person appointed under section 29xx is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

30.1xx (1) Each electricity vendor, IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

KPMG Memo

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5XX shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

35xx. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations under this Act or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998*.

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Regulations

38xx. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [5]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Prescribing types of payment obligations that constitute funding obligations.

4. Governing the determination of classes of specified consumers, which may include determination based on the manner in which rates are determined for different classes of specified consumers.

5. Governing the determination of the finance amount and the true-up amount and how those amounts are to be applied to the clean energy adjustment.

6. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

7. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the

[5] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

form of the invoices and the form of any notice to be provided to the specified consumer under this Act[6];

8. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

9. Governing the Financial Services Manager's power to establish and charge fees, including the ability to recover costs and expenditures and to earn a return.

9.1 Providing for a right of compensation for investment interest owners affected by a breach of section 25xx and the manner in which such a right may be enforced under this Act.

10. Prescribing the time within which any action required by this Act may be required to be done.

11. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII[7]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[6] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[7] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 22x for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(1.1) Subsection 25.33 (2) of the Act would be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (3) of the Act would be amended by adding the following paragraph:

4. A consumer who is a specified consumer within the meaning of the *Ontario Fair Hydro Plan Act, 2017* or such other consumer as may be prescribed.

(3) Clause 25.33 (4) (b) of the Act would be amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(4) Subsection 25.33 (5) of the Act would be amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and,

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

205x. Subsection 70 (2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the Act would be amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.
2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.
3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Subsection 79.16 (3) of the Act would be repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Ernst & Young Memo

EY
Building a better working world

Ernst & Young
222 Bay Street
P.O. Box 251
Toronto ON
M5K 1J7

Tel: +1 416 [illegible]
Fax: +1 416 [illegible]
ey.com

The Special Committee of the Board of Directors
Ontario Power Generation Inc. (the "Company")
700 University Avenue
Toronto, ON M5G 1X6

May 5 2017

Dear Sirs/Madames:

This letter is being issued to the Special Committee to assist them in their evaluation of management's analysis of the application of International Financial Reporting Standards ("IFRS") as adopted by the International Accounting Standards Board ("IASB")) to the specific transaction described in the Company's memorandum entitled *OPG Accounting Considerations of Ontario Fair Hydro* dated May 2 2017, herein referred to as "the Management Memorandum". We are issuing this letter in our role as auditors of the Company for the year ending December 31, 2017. As the Province consolidates OPG on an IFRS basis, this letter pertains solely to management's IFRS analysis as contained in the Management Memorandum.

We have read the Management Memorandum and we agree with management's analysis therein, subject to all of the assumptions and limitations identified therein. Specifically, we concur that the existing in draft legislation, along with the yet undrafted Regulation and special purpose vehicle (TRUST) documents, and various other agreements assuming they include the required criteria that Management has identified as outstanding in its Appendix A, would be sufficient to support consolidation of the TRUST with OPG Inc.

Additionally, we specifically refer you to the section entitled "Conclusion" in the Management Memorandum, which indicates that their analysis is based on draft legislation as well as their assumptions regarding the terms and conditions of certain contractual arrangements and other documentary evidence that is not yet drafted. Therefore, the Management Memorandum will be required to be updated to reflect the final contents of the legislation and other relevant contractual arrangements and documentary evidence. We will review the updated Management Memorandum once it is available, and update you on our viewpoints once our review of such updated Management Memorandum is completed.

The scope of this letter and any views expressed herein are limited to the transactions, facts, circumstances and assumptions provided to us by management or the Company as described in the Management Memorandum. If such facts, circumstances or assumptions differ, our conclusions may change.

We have not performed an audit or a review of the Management Memorandum. Additionally, we have not performed an audit as of any date or for any period subsequent to December 31, 2016.

Ernst & Young Memo

EY
Building a better working world

The ultimate responsibility for the proper accounting treatment under IFRS and US GAAP rests with the Company.

We have not been asked for, nor do we express, an opinion on the tax consequences of the transactions described herein.

The accounting for such transactions could be affected by actions of the International Accounting Standards Board, the IFRS Interpretations Committee, the Ontario Securities Commission, or other regulatory bodies. Any such actions occurring prior to the finalization of the 2017 IFRS consolidated financial information will be required to be analyzed by management, and such analysis will be reviewed by us in the context of the audit procedures we will perform on the consolidated IFRS financial information for the year ending December 31, 2017.

Our work does not include the provision of legal advice and we make no representations regarding questions of legal interpretation of any possible structure or strategy. We make no representation regarding the sufficiency of our work for any purpose.

This report is intended solely for the information and use of the Special Committee, Board of Directors and management. We understand that a copy of this letter may be provided to the Province of Ontario, the Independent Electricity System Operator, and/or the Ontario Energy Board. It is not intended to be, and should not be, used by anyone other than these specified parties.

This analysis, or portions thereof, should not be referred to or distributed to any other person or entity, other than those noted in the paragraph directly above. It is not to be referred to or quoted, in whole or in part, in any registration statement, prospectus, public filing, loan agreement, or other agreement or document.

Yours sincerely

Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants
Tracy E Brennan
Partner
416-943-2615

OPG Memo

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

May 2, 2017

ONTARIO POWER GENERATION

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.

1

- 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.

OPG Memo

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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]	
Relevant activities of the Trust and how decisions are made about those activities	Relevant activities: The relevant activities of the Trust are: • To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs. • To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing • To provide funding to the IESO in return for an interest in a future cash flow stream • To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding. • To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation • To finance the requirements associated with the short-fall amount • To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing Financing Plan (Legislation: Part IV – Implementation) • OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan'. • 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. • OPG can amend the Financing Plan at any time without the approval of the Minister. Fair Allocation Amount (Legislation: Part IV – Implementation) • 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. • 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.

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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]	
	Decisions made and voting rights of the Trust: 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]** *Voting of members:* Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG. Termination Rights 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 [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 [IFRS 10, paragraph B57(b)]	**[NOT YET ADDRESSED IN CURRENT LEGISLATION]** OPG has exposure and rights to variable returns from the Trust in the form of the following: • 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. • 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. • 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. • 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

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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 [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. 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. 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. 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. 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. 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 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.

OPG Memo

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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. ***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'). ***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. ***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
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.

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
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.

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
Ω</td><td>The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
a. The Trust
b. The most subordinated debt of the Trust

See below for financing structure.

<table>
<tr><th></th><th>Risk Profile</th><th>Source</th><th>% of Total Fundin[g] 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
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.

See chart in Point 6 above.</td></tr>
</table>

OPG Memo

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

Issue	No.	Requirements
	8 RT	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows: 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 ***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 ***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. ***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.

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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. ***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. ***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. ***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. **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:** • **25% Reduction (June 1, 2017) where the average bill will**

OPG Memo

Issue	No.	Requirements
		reduce by 25% including of HST and social programs noted above • **Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation** • **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.** • **Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.** **OPG will determine the manner in which the intangible asset, once purchased from the IESO will be collected and the period of collection.** **The recoverability of the existing intangible assets cannot be impacted by the Province.** **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. **See above.**
	12 RT	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible. ***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.

OPG Memo

Draft for Discussion Purposes - CONFIDENTIAL
Accounting Topic Discussion Paper
Ontario Power Generation (OPG)

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.