CABINET BRIEFING NOTE
AND LRC RECOMMENDATION

Energy
Fair Hydro Plan Regulations

Cabinet (info) Feb 15, 2017	TB/MBC and Cabinet March 1, 2017	Announcement March 2, 2017	TB/MBC May 9, 2017	Cabinet May 10, 2017	Introduction May 11, 2017
Royal Assent June 1, 2017	TB/MBC June 27, 2017	Cabinet June 27, 2017		Program Effective Date July 1, 2017	

Summary of Proposal

The proposed regulations are consistent with Cabinet direction.

Context for Decision:

On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which would lower bills by 25% for a typical residential consumer, starting in the summer of 2017. OFHP includes some benefits for all consumer classes as well as targeted benefits to those identified as having the greatest need, and includes the following major components:

- Refinancing a portion of the Global Adjustment (GA);
- Helping vulnerable electricity consumers ("social programs");
- Expanding the Industrial Conservation Initiative (ICI);
- Improving sector efficiency; and
- Modernizing Ontario's electricity market.

The *Fair Hydro Act, 2017,* was introduced on May 11, 2017 and received Royal Assent June 1, 2017.

Proposal

This proposal is the second batch of regulations and next step in the implementation of the OFHP and would establish the necessary regulations under the *Ontario Energy Board Act, 1998* (OEBA), and the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) related to:

1. Partial Refinancing of the Global Adjustment (GA):

The ministry is proposing a new regulation under the OFHPA to

The Ministry of Finance (MOF) is seeking an Order in Council (OIC) to authorize the Minister of Finance to provide loan(s) to the Ontario Financing Authority (OFA) in an amount of up to $2B, which will provide the OFA with the capacity to provide additional loans to the Independent Electricity System Operator (IESO) in order to fulfil the commitments under the *Fair Hydro Act, 2017*.

2. Social Programs:

The ministry is proposing amendments to existing regulations under the OEBA to allow for the orderly transition of the Ontario Electricity Support Program (OESP) from the electricity rate base to government funding.

Why does Ontario need these changes? Why now?

Addressing rising electricity prices is among the highest priorities for Ontarians. Since the OFHP was announced there has been increased media attention and public pressure for the government to take the necessary steps to enact the commitments made in the plan. The *Fair Hydro Act, 2017,* identifies a July 1 implementation date for the various price mitigation initiatives contained within. Pending approval of the regulations, the OEB will recalculate rates to be implemented for July 1, 2017.

What is the expected cost to government?

The estimate for the combined impact of the social programs in this proposal is expected to be $359M in 2017-18, growing in 2018-19 once annualized. The ministry will return to TB/MBC with updated out-year figures following program implementation. This investment has been factored into the fiscal plan in the 2017 Ontario Budget. These estimates are based on variable inputs such as program uptake, future energy consumption of various consumer groups and future distribution rates, and are therefore subject to change.

TABLE 1: Fiscal Impact ($M) of Social Programs	2017-18 Budget
Rural or Remote Rate Protection / Distribution Rate Protection	344
On-Reserve First Nations Delivery Credit	15

Note: As approved in the TB/MBC submission of Mach 1, 2017, and confirmed in Vote-Item 2905-1, the financial impacts of the social programs for the period July 1 2017- March 31, 2018.

What are the key steps to deliver this proposal?

- Spring- Summer 2017- Energy to work with IESO, OEB, OPG, OFA and LDCs on the implementation of OFHP.
- July 1, 2017- the remaining reductions and initiatives associated with the OFHP would take effect.

How will the changes be communicated?

The proposed changes will be communicated via a news release or backgrounder in late June.

Cabinet Office Analysis

The proposed new regulations under the *Ontario Fair Hydro Plan Act, 2017* (OFHPA) and the regulatory amendments under the *Ontario Energy Board Act, 1998* (OEBA), *Electricity Act, 1998* and *Ontario Rebate For Electricity Consumers Act, 2016* (ORECA) allow for the implementation of the key elements of Ontario's Fair Hydro Plan (OFHP) announced on March 2, 2017 and are consistent with Cabinet direction.

1. Partial Refinancing of the Global Adjustment:

The ministry is proposing a new regulation under Part II of the OFHPA that would support the implementation of the refinancing of the Global Adjustment (GA), including:

- defining the typical consumer upon which the OFHPA calculations to achieve the 25% reduction will be based;
- the methodology required for OEB to apply rate reductions under the OFHPA for regulated rate consumers;
- the methodology required for OEB to determine adjustments to be made in respect of specified consumers as defined in the OFHPA who are not regulated rate consumers;
- the methodology for setting electricity rates and adjustments to GA costs for the year beginning April 30, 2018 to limit increases to inflation; and
- the flow-through of rates and adjustments in circumstances involving unit sub-metering.

The new regulation is required for the Ontario Energy Board (OEB) to recalculate electricity rates in advance of the July 1 implementation deadline outlined in the OFHPA. If approved, the OEB is targeting June 22 to announce changes to rates for the July 1 effective date.

Critics of the OFHP may see the implementation of this component of the plan as compromising the independence of the OEB. This is mitigated by the fact that the government has always, through legislation and regulation, established the parameters within which the OEB operates, and has no control over the day to day operations of the Board.

It is possible that the definition of a typical consumer may lead to some confusion amongst consumers upon implementation, as it is not expected that many, if any, actual consumers will align perfectly with this definition. Consumers will therefore see rate reductions above and below 25% as of July 1. Continued consistent messaging will be required to emphasize the 25% reduction in rates on average.

The ministry is also proposing amendments to O. Reg. 280/14 to authorize IESO to borrow for the purposes of funding the regulatory asset, including borrowing from the Ontario Financing Authority (OFA).

2. Social Programs

Ontario Electricity Support Program (OESP)

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills. The *Fair Hydro Act, 2017* amended the OEBA to allow for the program to transition from the electricity rate base to government funded, and allow for the potential transition of the program administration to the Crown or other entity.

The ministry is proposing amendments to O. Reg. 314/15 under the OEBA to implement an approach to proclaim the relevant section of the OEBA into force on a future date to be named by proclamation. The proclamation OIC would be brought forward for approval at a later date. This would allow time for the funds accumulated in the IESO's OESP variance account to be more fully expended prior to the repeal and replacement of the relevant section. However, the MCSS data sharing provisions, along with ss. Amendments to s. 79, the new sections 79.3 and 79.4, would came into force at Royal Assent of the *Fair Hydro Act, 2017* on June 1, 2017.

The ministry is also proposing amendments to O. Reg. 314/15 made under the OEBA to include a "General Rule" that would enable MCSS staff to sign up social assistance clients based upon Ontario Works (OW) and Ontario Disability Support Program (ODSP) eligibility criteria, and matching this eligibility to the existing OESP household size / income credit table. The amendment is in support of efforts to increase enrollment by reducing application burdens on target populations and enable the development of automatic enrollment procedures for some populations already receiving other government programming.

Risks

Fiscal

The social programs do not have a scheduled end date and represent an ongoing fiscal pressure, which will likely increase over time. These estimates are based on variable inputs such as program uptake, electricity market conditions, future energy consumption of various consumer groups and future distribution rates, and are therefore subject to change.

Perception

It is expected that there will be some criticism of the OFHP messaging and bill presentment changes as being political in nature and not strictly necessary for transparency or program implementation.

Legal

In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets present only a low risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets. Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the asset, but rather is doing so in order to lower the price in the short term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax. The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period.

Under the FNDC program “non-status” Indigenous communities without reserves (e.g. certain members of the Algonquins of Ontario (AOO), Mocreebec etc.) and Métis will not be eligible as they do not hold reserve lands. There is a risk that these communities could challenge the program on the grounds that it discriminates against them contrary to section 15 of the Charter (equality rights). This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.

Program Design and Implementation

The proposal relies heavily on LDCs as a partner for implementation. Many of these changes will need to take place simultaneously and amongst the 70 LDCs in Ontario there is variety in size, efficiency and ability to implement change. This risk is mitigated by phase in implementation provisions in the enabling legislation and proposed regulations that allow for LDCs to provide retroactive payments to July 1, 2017 if they are, for technical reasons, unable to have the required program changes implemented by this date. While it is not currently expected that the LDCs will need to rely on the phase in provisions, under the regulations, the programs are required to be in place no later than October 1, 2017.

Linkages

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in summer 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP will balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The *Ontario Rebate for Electricity for Electricity Consumers Act, 2016*, (ORECA) put in place an 8% rebate for residential, small business customers and farms beginning January 1, 2017.

The Ontario Clean Energy Benefit (OCEB) – Was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB program ended on December 31, 2015.

Debt Retirement Charge – On January 1, 2016, the government ended the electricity DRC on residential users, which was earlier than previously estimated. For all other consumers the DRC will be removed by April 2018, also earlier than previously estimated.

Industrial Conservation Initiative (ICI) – Implemented in January 2011 to help large industrial consumers reduce electricity costs by reducing consumption in peak periods. As part of OFHP, ICI eligibility has been expanded several times, and was most recently expanded to allow for the participation of the manufacturing and, e.g., greenhouse sectors with an average month peak demand greater than 500 kilowatts (kW) and less than or equal to 1 megawatt (MW). ICI provides a benefit to all consumers by decreasing the need for costly peaking generation over the long term.

Affordability Fund – Approved as part of OFHP, and under development, the Affordability Fund is intended to provide energy efficiency measures to Ontarians who are not eligible for low income conservation programs, and who are otherwise unable to make energy efficiency improvements without financial assistance.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to $2 per month, on average, to residential consumers. This commitment to residential consumers was exceeded by the January 2017 8% rebate.

The commitment to mitigate the cap and trade impact on electricity costs for commercial and industrial consumers (i.e., Class A and B) has not been fully addressed, though the two recent expansions to the ICI provides for significant potential savings. Funding electricity social programs through government funds rather than the rate base will also provide saving to all electricity consumers.

The CCAP committed to a new Climate Change agency that would act as one window for the delivery of climate change-related programs. The Green Ontario Fund (GreenON) - is tasked to develop programs and services designed to:

- Reduce greenhouse gas emissions from housing, buildings and the production of goods; and,
- Increase uptake and overcome market barriers of low-carbon technologies and processes.

The CCAP committed that the government consult on and develop options to mitigate the impact of carbon pricing and resulting increased utility costs on residential tenants. The mitigation is proposed because tenants do not usually have the opportunity to make changes to their building envelope (e.g. windows, insulation) or major appliances that would allow them to address utility costs themselves.

The *Rental Fairness Act, 2017* received Royal Assent on May 30, 2017. The legislation amends the *Residential Tenancies Act, 2006* (RTA) and removes above-guideline rent increases for utilities, to protect tenants from carbon costs and encourage landlords to make their buildings more energy efficient. The removal of above-guideline increases for utilities will take effect on proclamation. To help protect tenants in the interim prior to the legislative amendment coming into force, regulations under the RTA have been amended to remove carbon costs from the calculation for above-guideline increases for utility charges.

Delivery

The proposed regulations are required under the major components of the *Fair Hydro Act, 2017* in order to fully implement the initiative and clarify program details.

<u>OESP</u>

The amendments made through the *Fair Hydro Act, 2017* allow for a transition period where the program continues to draw on the existing IESO variance account. IESO is required to notify the Ministry of Energy when it expects the variance account to be depleted (likely sometime in the fall).

Current proposed amendments will enable the sharing of information between the Ministry of Community and Social Services (MCSS) and the OEB to help streamline OESP enrollment for Ontario Disability Support Program (ODSP) and Ontario Works (OW) recipients.

1. Partial Refinancing of the Global Adjustment:

The ratepayer benefit of the OFHP will be in place as of July 1, 2017. The establishment of the regulatory asset and purchase by the OPG trust is expected to take three to six months to implement following the June 1, 2017 Royal Assent of the *Fair Hydro Act, 2017*.

The act includes transition provisions in circumstances where for technical or operational reasons invoices cannot be adapted in time for the issuance of the first invoices under the program. In these cases, adaptation of invoices must be implemented by August 1, 2017, followed by a subsequent lump sum credit to the consumer once the invoice is adapted.

Using the methodology outlined in the OFHPA and the Part II regulations, the OEB will calculate the electricity rates that consumers will pay as of July 1, 2017.

2. Social Programs:

<u>DRP and RRRP</u>

The programs will take advantage of existing LDC and IESO processes. The regulatory amendments also enable payment flows to prescribed LDC to allow recovery of RRRP and DRP payments made to customers.

It is possible that for technical reasons not all LDCs will be able to implement the changes required under the DRP in time for the prescribed effective date. In this case, the regulation dictates the eligibility of July 1st and gives until October 1, 2017 for LDCs to get their systems in place. The LDCs would provide a lump sum credit to customers that would otherwise have been eligible for benefits under the program.

<u>On-Reserve First Nations Delivery Credit (FNDC)</u>

The ministry is consulting with affected LDCs, the OEB, the IESO and Chiefs of Ontario (COO) on implementation. FNDC will take advantage of existing LDC, IESO, and community-LDC relationships to implement the program. The regulatory amendments also enable payment flows to prescribed LDCs to allow recovery of FNDC payments made to customers, but may still benefit from and react positively to targeted RRRP and DRP enhancements.

It is possible that for technical reasons not all LDCs will be able to implement the changes required under the program in time for the prescribed July 1, 2017 effective date. OFHPA includes transitional provisions that would ensure customers remain eligible for the delivery credit from the prescribed date. Once available, the rebate would appear on the eligible customer’s electricity bills as a credit for their delivery line. FNDC line item, demonstrating the savings by eliminating the delivery line costs on the bill.

STAKEHOLDER AND PARTNER CONSIDERATIONS

<u>General Public (including residential and small businesses)</u> – Likely support a proposal that is projected to provide 25% in average rate relief (including the 8% announced in 2016) and other targeted relief for vulnerable Ontarians, but there has been public discussion of the longer term implications. Some individuals and organizations will perceive the GA smoothing as unduly burdening future generations. Ability of the public to understand current and recent changes will heavily depend on government communications. There may be also some criticism that additional fiscal pressure and risk is being taken to benefit some customers that are not in as much need of rate relief as others (e.g., those that own second homes or cottages).

Large Industrial and Commercial Consumers – Will continue to be concerned with the impact of cap and trade on electricity prices and the commitment in the Climate Change Action Plan to use GGRA funds to “keep electricity rate affordable”. Will likely respond positively to the recent changes to expand ICI eligibility to some manufacturing and greenhouse Class B customers, but may be more neutral on the rest of the initiatives.

The impact of cap and trade has been added to electricity bills as of January 2017. Class B consumers have raised concerns about the cost of electricity and its impact on their business competitiveness. Although Class A electricity consumers have access to ICI, they are also concerned about the impact of cap and trade on their electricity costs. They are expecting that GGRA funds will be used to mitigate their costs. There is an expectation government is going to take specific action to mitigate their increases due to cap and trade, and given the initiatives proposed in this submission, there is no plan to provide further relief through the Greenhouse Gas Reduction Account. Funding electricity support programs through government funding rather than the rate base will provide some saving to both Class A and B consumers.

Tenants – Likely to support any future price mitigation measures that directly benefit them; likely to react negatively if no mitigation measures target them.

Northern communities – Likely to support the targeted RRRP delivery relief.

Indigenous communities – First Nation members who live on reserves are likely to support the proposal because of the targeted delivery relief. Other Indigenous communities (i.e., Métis, non-status, First Nations without reserve land bases) are likely to react negatively at being ineligible for the delivery charge relief.

NGOs – May react negatively towards any price relief that is not directly tied to energy conservation. May criticize the inclusion of natural gas electricity generators as part of the clean energy costs.

Solar PV sector – May react negatively to price relief as it can be seen to undercut the economics of net metering.

LDCs – Have expressed the need for an additional tool to provide assistance to their customers who are having difficulty with their electricity bills.

Terms you need to know

- **Global Adjustment (GA) –** The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price in order to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, as well as the cost of conservation and demand management programs. The GA is instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available.
- **Local Distribution Companies (LDCs) –** Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.) LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An

LDC must receive Ontario Energy Board approval to charge a distribution rate.

- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Ontario Power Generation (OPG) –** A business corporation owned by the Province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Independent Electricity System Operator (IESO) –** An independent corporation established under the *Electricity Act, 1998* that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.
- **Rental Housing Affordability- *Residential Tenancies Act, 2006* (RTA) amendments –** To mitigate the costs of carbon pricing on tenants, who are not able to control major building features that impact energy use (like insulation and windows) or major appliances, the government has amended the RTA to remove the ability for landlords to increase rents above the guideline based on extraordinary increases in utility costs. The removal of above-guideline increases for utilities will take effect on proclamation. Interim regulatory amendments were also made under the RTA to remove carbon costs from the calculation for above-guideline increases for utilities charges.