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A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

Amending O. Reg. 206/17

(GENERAL)

1. Paragraph 1 of section 5 of Ontario Regulation 206/17 would be amended by adding the following subparagraph:

viii. Payments made by a financing entity to the Province during the period arising on subrogation or otherwise arising pursuant to a protection agreement entered into under subsection 5 (2) or (3) of the Act.

[Note: This arises out of a suggestion by Blakes. We need to clarify the underlined phrase. In particular, the phrase "period arising on subrogation" is unclear (when does it begin/end?). Consider the term "subrogation" – whether it is sufficient on its own to explain what is meant to be captured. The concept of "protection agreement" would need to be clarified as well. Is this meant to refer to a "period arising pursuant to a protection agreement" and if so what is that period?] [IESO agrees with the Note. It is not clear what this is intended to achieve. If the financing entity is the beneficiary of the protection, there will not be a subrogation or equivalent claim as against it.]

2. The Regulation would be amended by adding the following section:

IESO to pay, remit amounts

9.1 (1) During the period beginning on January 1, 2018 and ending on June 30, 2021, the IESO shall pay and remit the following amounts to a financing entity:

1. Any amounts charged to the IESO by the financing entity in respect of carrying costs incurred by the financing entity during the period beginning on June 1, 2017 and ending on April 30, 2021.

[Note that without the change above, the IESO would not be able to pay amounts after April 30, 2021.]

(2) For the purposes of subsection (1), a financing entity may accrue amounts referred to in that provision commencing on and after the first month during which funding obligations are incurred by the financing entity and provided that it charges the IESO during the period provided for in that provision, and particular amounts paid or payable can only be recovered once. [Note, changes are to avoid risk of double recovery.]

(3) For the purposes of determining the amounts to be paid under subsection (1), the IESO may rely on information provided by a financing entity with respect to the amounts.

(4) For the purposes of this section, the carrying costs incurred by a financing entity during a period of time shall be determined as follows:

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

   i. Funding costs paid or payable during the period.

   ii. Derivative payments required to be made during the period.

   iii. Amounts deposited, as required under the governing documents of funding obligations, into accounts other than capital accounts during the period.

   iv. Financing entity expenses paid or payable during the period.

   v. Tax liabilities payable during the period.

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

   i. Amounts withdrawn, as permitted under the governing documents of funding obligations, from accounts other than capital accounts during the period. [Note: financing documents will not require an amount to be withdrawn from an account.]

   ii. Any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements.

   iii. Tax refunds received during the period.

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

[Note: Given that the language in Section 9.1 in respect of carrying costs is intended to distinguish between principal and interest amounts, we propose modifying the definition of funding costs to make that distinction clear.

> For the purpose of this section "funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment, but not including amounts paid or payable on account of the principal of a funding obligation"

[Note: Instructions said that the finance amount should be determined "on an accrual basis"… so Leg. Counsel has been assuming that there is need to adjust the rules set out in subs. 5 (2), (3), (4) and (5) of O. Reg. 206/17 for the purposes of determining "carrying costs". Please provide your comments.]

3. Section 16 of the Regulation would be amended by adding the following paragraph:

3. Any amounts paid or incurred by the IESO under section 9.1.

Commencement

4. This Regulation would come into force on a day to be established by Government.