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THE LANGUAGE USED IS SUBJECT TO CHANGE BASED ON DRAFTING REQUIREMENTS

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A PROPOSAL TO CREATE REGULATION

MADE UNDER THE

ONTARIO FAIR HYDRO PLAN ACT, 2017

Amending O. Reg. 206/17

(GENERAL)

Background:

In order to ensure that Government can create a regulatory approach which ensures that the IESO is obligated to pay the carrying charges incurred by the FSM and financing entities, we must first obligate the IESO to pay those amounts. This requirement aligns with EA s.25.33(1)(c) and (2)(c).

These amounts would not be collected through Clean Energy Adjustments. Instead, the amounts would be collected from GA ratepayers under the auspices of EA s.25.33(1)(c) and (2)(c). Since these amounts are not being recovered from specified consumers via CEAs by the IESO, the limitation in s.25(3) of OFHPA should not be triggered or offended.

These instructions for a proposed amending regulation would add to the OFHPA General Regulation the following things:

- The legal authority and requirement for the IESO to make payments in respect of carrying charges to the financing entities;
- Definition or means of determining "carrying charges" - to be defined in relation to "finance amounts" excluding principal;

Note: The regulation-making authority for this amending regulation is located in paragraph 1 of s.42(1) as well as the catch-all in subsection 42(9) of the OFHPA. [NTD: to be discussed. The current draft regulations contemplate that the amount funded by IESO pursuant to the regulatory requirement of this regulation is added to the GA by means of the proposed amendments to O. Reg. 429/04. By operation of the rate reductions implemented by Fair Hydro, this will have the effect of increasing the IESO deferral, but the amount is not directly added to the IESO deferral.

An alternative and simpler approach that the Ministry proposed would be to add the amount of the payments by IESO, to the IESO's variance account (established under s. 24 of Fair Hydro Act). This would avoid the need for the complicated amendment to O. Reg. 429/04 and resulting complex settlements.]

9.1 (1) During the period commencing January 1, 2018 and ending on or before April 30, 2021**,** the IESO shall be required to pay and remit the amounts provided for under subsection (2) to one or more financing entities, where such amounts are charged to the IESO by a financing entity in respect of the period commencing June 1, 2017 and ending on or before April 30, 2021.

(2) The IESO shall pay, amounts in respect of and which relate to the following, without duplication: [NTD: this should simply create the IESO obligation to pay these amounts.]

[NTD: we suggest that the amounts to be paid should be the sum of "funding costs", "financing entity expenses" and "tax liabilities paid during the period" net of "any payments received in connection with a derivative agreement, including ordinary course receipts and payments received on termination" and tax refunds received during the period.

This was arrived at by looking at the finance amount calculation in Section 5 of the General Regulation and excluding the items in Section 5. 1. (i) and (iii) because they relate to principal and 5. 1 iv because derivative payments are already taken into account in the calculation of funding costs.On the same theory any credit for refinancing amounts (5.2. iv) was excluded. Also excluded are funding rebates and recovery amounts (5.2. ii and 5.2. iii) because both are principally referencing the payments to be made by the IESO.]

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Retrospective to June 1, 2017

(3) For the purposes of recovering the costs mentioned in paragraphs [] through [] of subsection (2), a financing entity may charge to the IESO any amounts which relate to those items that have been paid or incurred on or after June 1, 2017.

Electricity vendors, remit to IESO, etc.

(4) For the purposes of subsection (2) and in accordance with this Regulation, electricity vendors shall remit to the IESO the amounts received *[that have been remitted*

from?] from specified consumers pursuant to section 10.7 of Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) made pursuant to the *Electricity Act, 1998.* [NTD: are we trying to establish by this section that LDCs must pay this part of GA out of money received from consumers, but all additional shortfall is therefore allocated to other IESO counterparties?]

[NTD: add provision similar to section 23(4) of Fair Hydro Act such that IESO may rely on information provided by a financing entity for the purpose of determining the amount IESO is required to fund. In other words, IESO is not required to determining the accuracy or reasonableness of the amounts invoiced by the financing entity.]