Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. Any notes included in this document are intended only to help facilitate a discussion of the topics to which they relate.

A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

DEFINITIONS

[General NTD: Please note that in certain cases, the drafting has not captured (caught up to) the most recent comments received. We hope to get closer on the next draft but please do not hesitate to insert your previous comments where the draft does not contemplate the important points you have raised.

"Track-changed" drafting language right in the draft (rather than or together with explanatory text) is most useful at this stage. Finally, any responses you have to "OLC" (Leg. Counsel) notes and questions would be most appreciated]

Due date/Timing: First thing Tuesday, June 20th (please). This is due to stark drafting deadlines and the need to get one more draft out to all involved parties prior to finalizing the proposal.

[Please note – We have appreciated all of your excellent comments. However, this version does not fully capture all comments. We hope to have a further updated draft for you soon but will need further comments from you within the above timelines in order to facilitate this. Thank you.]

Definitions

0.1xx In this Regulation,

[OLC Note: Please advise if these definitions work as defined for the entire regulation. Your instructions were for these terms to be defined solely for the purposes of calculating the finance amount but I believe the terms get used elsewhere in the regulation and probably are meant to have the same meaning throughout.]

"capital account" means an account required to be established and maintained by or on behalf of a financing entity pursuant to the terms of a funding obligation for the purpose of accumulating funds to be used to make repayments of principal in respect of the funding obligation;

[IESO NTD: The IESO does not think that the financing entity should have the right to establish reserves and reserve accounts in its discretion and pass on the cost through the clean energy adjustment. Such reserves and reserve accounts should be limited to those required by the terms of the funding obligations.]

[OLC Note: Is the portion in italics necessary? If so, is it sufficiently clear what the different dates mean?]
[OLC Note: I'm not sure if the "repayment" referred to here is always in respect of the same funding obligation under which the capital account was established. I'm not sure if there may be multiple capital accounts (and multiple funding obligations) for each financing entity. I'm also not sure if any of this matters, but I thought I should ask.]

"capital reserve deposit" means an amount required under the terms of a funding obligation to be deposited into a capital account;

"capital reserve withdrawal" means an amount withdrawn by a financing entity from a capital account or applied on account of a funding obligation;

"debt service costs" means any required payment of interest, premium or fees paid by or on behalf of a financing entity in respect of its funding obligations;

[IESO NTD: Defining funding costs as a component of finance amounts which relate to funding obligations is confusing]

[OLC Note: What does "finance charge" mean? This can easily be confused, I think, with "finance amount". We don't use the term "finance charge" anywhere else.]

"finance reserve account" means an account required to be established and maintained by or on behalf of a financing entity pursuant to the terms of a funding obligation for the purpose of collateralizing the funding obligation;

"finance reserve deposit" means the amount required under the terms of a funding obligation to be deposited into a finance reserve account;

"finance reserve withdrawal" means an amount withdrawn by a financing entity from a finance reserve account or applied on account of a funding obligation;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations, other than the proceeds of the issuance of funding obligations;

[IESO NTD: is this necessary, what is it intended to capture?]
[OLC Note: I can't tell if the portion in square brackets is meant to be an example of "the proceeds of the issuance of funding obligations" or if it is meant to be an example of the amounts that are included in "recovery amount".]

"redemption amount" means the amount paid by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other additional amount paid under the funding obligation to give effect to the redemption, prepayment or repurchase;

"refinancing amount" means the principal amount of a funding obligation incurred by or on behalf of a financing entity where the proceeds of the funding obligation are not paid to the IESO in respect of all or any portion of the purchase price of an investment interest;

"repayment" means the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation,
[OLC Note: What does the underlined phrase mean? An agreement to repay? Just want to confirm that this is something that is included for "repayment" but not for other amounts.]

"swap payments" means amounts paid by a financing entity on account of an interest rate, currency or other form of derivative agreement; including any bonds or loans to finance collateral obligations required under the swaps or derivative agreements; and amounts paid on the termination, unwind or amendment of any such interest rate, currency or other form of derivative agreement;

"swap receipts" means received by a financing entity on account of an interest rate, currency or other form of derivative agreement; including any receipt of bonds or loans to finance collateral obligations previously provided under the swaps or derivative agreements which may include receipt of an amount on the termination, unwind or amendment of any such interest rate, currency or other form of derivative agreement;

"tax" means any tax, duty, fee, premium, assessment, impost, levy or other charge imposed by any governmental authority, including,

(a) an amount levied on […];

(b) an amount measured by […];

(c) an amount referred to as [...];

[OLC note: Please instruct on what belongs in each of the above clauses - the following list was provided but doesn't make sense when all terms are lumped together…
income, gross receipts, profits, capital, minimum tax, sales, goods and services, harmonized sales, value-added, excise, use, withholding, property, surtaxes, payroll, employer health, employment insurance and government pension plan premiums or contributions]

(d) any amount or charges under Part VI of the *Electricity Act, 1998*;

(e) any instalment in respect of an amount mentioned in clause (a), (b), (c) or (d); and

(f) any interest, penalty, fine, addition to tax or other amount imposed in respect of an amount mentioned in clause (a), (b), (c) or (d);

[OLC Note: Does "addition to tax" need some elaboration in order to convey the intended meaning?]

"tax liability" means all taxes paid by or on behalf of a financing entity as a result of its engagement in any activity authorized or permitted by the Act, including:

(a) activities related to a financing entity, including the creation, maintenance or reorganization of a financing entity,

(b) activities related to an investment interest and related assets and liabilities, including the acquisition, holding or disposition of an investment interest and activities relating to bank accounts to hold reserves and payments received,

(c) activities related to a funding obligation, including the incurrence, performance, redemption, repayment or disposition of a funding obligation, and

(d) activities related to an agreement, including the entering into, performance, enforcement, termination or disposition of an agreement in respect of interest rates or currency or any other form of derivative agreement;

"tax refund" means all amounts received by a financing entity as a refund of tax and to which the financing entity is entitled as a result of its engagement in any activity authorized or permitted by the Act, including activities described in clauses (a) to (d) of the definition of "tax liability";

Funding obligation

1xx. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by a financing entity:

[ENE LSB note to OPG/Tory and IESO: Does this definition, together with the definition of "funding obligation" in subs. 1 (1) of the Act, adequately address the "principal" amounts of funding obligations along with the other elements set out below?]

1. Any present and future interest, fees and other amounts owing in relation to a funding obligation.

2. All obligations in respect of refinancing amounts.

[OLC Note: I have re-worded para. 2 so that it is about a "type of amount" as per the opening flush of this section. I believe the meaning conveyed is consistent with the instructions.]

3. All obligations in respect of an interest rate, currency or other form of derivative agreements related to funding obligations;.

4. Any amount raised in a manner consistent with the Financing Plan for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.[IESO

[IESO NTD: Consider deleting the language "consistent with the Financing Plan". Consistency with the Financing Plan should not be relevant to the status or rights associated with obligations incurred by the Financing Trust. Having said that it is not clear that 4 adds anything].]

(2) The types of amounts set out in paragraphs 1 to 4 of subsection (1) include both principal and interest in respect of the amounts.
[OLC Note: subs. (2) doesn't really make sense for para. 1 of subs. (1), which refers expressly to "interest". Could we remove the reference to "interest" in para. 1 if we need to retain subs. (2)?]

Refinancing

1.1xx (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. If the proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1, the proceeds are applied as designated.

[IESO NTD: All debt properly incurred by a financing entity will need to constitute a Funding Obligation from the time incurred, since otherwise it cannot be serviced by the financing entity out of the clean energy adjustment. The financing entity should not be able to incur any debt other than acquisition debt or refinancing debt.]

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) cease to be applied as designated, the debt ceases to be a refinancing.
[OLC Notes:
- I used the term “debt” instead of “funding obligation” when referring to the incurrence that constitutes the “refinancing” because this tracks the language of the definition of “refinancing”.
- Perhaps the following scenario is not likely to occur as a practical matter, but what if the FSM changed the designation of the proceeds? Does that need to be addressed?
- Is the designation by the FSM something that would be set out expressly in the Financing Plan? I’m just wondering how anyone would know whether or not the debt continued to meet the criterion set out in para. 2 above.]

CLEAN ENERGY ADJUSTMENT

Specified consumers, unit sub-meter providers, s. 13 (6) of the Act

2xx. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer,

    i. the specified consumer may collect from the person the amount of the clean energy adjustment shown on the invoice, and

    ii. the specified consumer may, immediately upon receiving the amount from the person, provide the amount to the electricity vendor on behalf of the person.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer,

    i. the unit sub-meter provider may collect from the person the amount of the clean energy adjustment shown on the invoice and provide the amount collected to the specified consumer, and

    ii. the specified consumer may, immediately upon receiving the amount from the unit sub-meter provider, provide the amount to the electricity vendor on behalf of the person.

Finance amount

3xx. (1) Subject to subsection (2), the finance amount in respect of a financing entity and a reference period (or portion thereof) shall be determined as follows:

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts in respect of the financing entity and the reference period or portion thereof:

[OLC Note: Consider whether the above "in respect of the reference period" is sufficiently clear to establish parameters on each of the amounts set out below.]

i. Principal repayments and redemption amounts.

[OLC note: above was only place where we used the term 'repayment amount' so not necessary to define.]

[OLC Note: Consider subpara. i along with the definition of "repayment" above… I'm not sure this works… do the "amounts payable" include payments that are made? Or only those that are outstanding? See my question under that definition about "the provision for the payment of…"]

ii. Debt service costs.

iii. Swap Payments.

iv. Finance reserve deposits.

v. Capital reserve deposits.

vi. Expenses reasonably incurred by the financing entity in connection with its activities under the Act.

[IESO NTD: There should be a requirement that expenses be reasonable and for a proper purpose.]

vii. Tax liabilities.

[IESO NTD: What analysis has been done relative to what taxes are to be charged to the rate base and what the financing entities should be required to do in order to limit their tax liabilities?]

2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts in respect of the financing entity and the reference period or portion thereof:

[OLC Note: Consider whether the above “in respect of the reference period” is sufficiently clear to establish parameters on each of the amounts set out below.]

i. Capital reserve withdrawals.

ii. Finance reserve withdrawals.

iii. Swap Receipts.

iv. All amounts paid to or for the benefit of financing entity as a purchase price rebate or as a contribution to its expenses, taxes or debt service costs.

[OLC Note: There is no need for the defined term ‘funding rebate receipt’ because this is the only place where that concept matters. I’m proposing the words ‘as a result of’ based on my understanding of the definition of “funding rebate” in subs. 1 (1) of the Act.

Here we have used the phrase “the amount paid” and not “the amount payable”. We should be consistent if we mean the same thing.]

v. Recovery amounts.

vi. Refinancing amounts.

vii. Tax refunds.

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

(2) The following rules apply with respect to the determination of the finance amount in respect of a reference period:

1. The determination shall be made by applying a cash basis accounting method.

[OLC Note: I understand that there is a desire to create more certainty around what is meant by “cash basis accounting method”. [Leg. Counsel notes that Ontario drafting practices include minimizing redundancies]. [I]f the descriptions set out in paras. 2, 3 and 4 are in fact redundant of what is meant by “cash basis accounting method”, can we delete para. 1 and rely on paras. 2, 3 and 4? Are those rules [sic] sufficient to convey the intended policy? If not, please explain what other aspects of “cash basis accounting method” need to be articulated.]

2. If the determination is in respect of a past reference period, the determination shall reflect cash amounts actually paid, deposited, received or made available in that

reference period. [OLC Note: Isn't this just a re-statement of what is described in para. 1 - e.g. isn't this just "cash basis accounting"?]

3. If the determination is in respect of a future reference period, the determination shall reflect the estimated cash amounts that will be paid, deposited, received or made available in that reference period.

4. If the determination is in respect of a partially completed reference period, the determination may reflect a combination of actual and expected cash finance amounts.

[OLC Note: I'm not sure if paras. 3 and 4 also fall under the general description of "cash basis accounting method" and are also redundant of para. 1?]

5. Taxes paid or to be paid to a governmental authority may be estimated in respect of the relevant tax reporting period of the governmental authority and allocated in respect of reference periods in such manner as [the FSM considers to be reasonable?].

6. Taxes estimated and allocated as described in paragraph 5 shall be deemed to have been paid by a financing entity if the following conditions are met:

[OLC Note: What happens if the following conditions are not met….]

i. The following amount, if any, is recognized as a tax refund in the reference period immediately following the reference period in which the actual amount of taxes was calculated in the tax return filed with a governmental authority: the amount by which the estimated taxes payable to the governmental authority in respect of the relevant tax reporting period exceeds the actual amount of taxes paid to the governmental authority in respect of the tax reporting period.

ii. The following amount, if any, is recognized as a tax liability in respect of the reference period immediately following the reference period in which the actual amount of taxes was calculated in the tax return filed with the governmental authority: the amount by which the actual amount of taxes paid to the governmental authority in respect of the relevant tax reporting period exceeds the estimated taxes payable to the governmental authority in respect of the tax reporting period.

Determining true-up amount

[OLC Note to draft: need to check these provisions carefully against the language of subs. 15 (2) of the Act to ensure consistency.]

4xx. (1) Until all funding obligations have been paid in full, the Financial Services Manager shall comply with the following rules:

[OLC Note: Consider whether we need the underlined phrase above and throughout… are the "finance amounts" separate from the "funding obligations"? (If so, why are we saying "any additional"… shouldn't we just say "any"?)

I'm actually not clear on exactly how the concept of "funding obligation" and "finance amount" are meant to relate to one another. The "finance amount" consists of many amounts that relate to the funding obligation.]

1. The Financial Services Manager shall calculate the true-up amount in respect of each finance entity and reference period and notify the Board of its determination for the finance entity and each reference period in accordance with subsection 5xx (1).

2. If the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a finance entity and reference period in respect of which the Board has made a determination under subsection 15 (4) of the Act, the Financial Services Manager may at any time during the reference period re-determine the true-up amount in respect of the remaining portion of the reference period.

(2) The true-up amount in respect of a finance entity and reference period or portion thereof shall be determined, as follows:

[ENE LSB note to ENE and IESO: Please determine how the "funding rebate" works in relation to the entire finance amount ", " true-up amount" and the composition of the "regulatory asset".]

$$T = (A - B) + C$$

[IESO NTD: The funding rebate operates as a credit against the finance amount and, as a result, is taken into account in the calculation of the true-up amount. The suggested language in Section 12 provides that rebate amounts paid by IESO are debited to the variance account.]
Where,

T = the true-up amount in respect of a financing entity and a reference period or portion thereof,

[OLC Note: I'm not sure I have understood the policy correctly… I think that regardless of whether the determination is being made before or during the reference period, the determination is always a determination of the *true-up amount in respect of the full reference period*. Is that correct? In other words, if the reference period begins on July 1st, I may determine the true-up amount on June 15th (before)… but then on July 15th I may decide that I want to determine it again, taking into account whatever information I have about the first 15 days of the reference period. But in both cases, I am always determining the amount for the full reference period.]

A = the aggregate of the finance amounts in respect of the finance entity and all reference periods preceding the reference period and, if the determination is being made at a point in time during the reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted by the IESO to or for the benefit of the finance entity during all reference periods preceding the reference period and, if the determination is being made at a point in time during the reference period, in respect of the portion of the current reference period that precedes the point in time,

C = any amounts to adjust for reasonably foreseeable differences between amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

[IESO NTD: We are concerned about both the feasibility of a mid- Reference Period recalculation of the relevant amounts and a mid-period rate reset by the Board. If there has to be a mid-Reference period recalculation, it should at the very least be as at the end of an accounting period. Consider with the Board and the LDCs whether a mid-Reference Period rate reset is feasible. Even if it is feasible, note the possibility of rate volatility since the reset amount might be applied to a very short period. If it is decided that partial Reference Period calculations are feasible, the calculation should in any event be done as at the end of the most recent usable accounting period. If a mid- Reference Period rate reset is possible, consider limiting the number in any one Reference Period. We think that adequate liquidity arrangements are a better alternative to a rate reset. Note that even if all forecasts are accurate, liquidity will still be required within a Reference Period since cash inflows and outflows (even if they match over the Reference Period) are unlikely to match for each month within a reference period.]

(3) The Financial Services Manager shall, when determining the amounts described in “C” in the formula set out in subsection (1), have regard to amounts due and payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

[IESO NTD: We do not think (3) is necessary at all since non-payments are reflected in the True-Up Amount (since only actual payments received are taken into account) and the estimate of Clean Energy Amounts to be received could take into account an estimate of projected default rates.]

(4) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment in respect of a month or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a redetermination of the true-up amount under paragraph 2 of subsection (1) or may do so in the determination of the true-up amount in respect of the following reference period.

[OLC Note - just want to clarify re the underlined phrase -- do you want to prohibit this kind of correction as being a rationale for an "emergency" redetermination? In other words, is this correction only permitted as part of a redetermination in a case where *the Financial Services Manager reasonably forecasts that the collection of the clean energy adjustment will be insufficient to pay the estimated finance amount for a reference period*?]

[IESO NTD: We do not think (4) is necessary since any error (which could go either way) would in the ordinary course be corrected through the True-Up mechanic. We think that there is value in limiting the number of parallel mechanisms].

Notification to Board

5xx. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period accordance with the following rules:

0.1 The notice shall be in respect of each month in the reference period or, in the case where a redetermination of the true-up amount has been made under paragraph 2 of subsection 3xx (1), the remaining portion of the reference period.

[OLC Note: In your instructions on s. 6xx (1), you mentioned notice regarding a 3-month period… I'm not sure how that is supposed to fit with the above requirement.]

1. Until such time as all funding obligations have been paid in full, the notification shall be provided,

[OLC Note: Same question as above re "any additional" finance amounts.]

[IESO NTD: The funding obligation definition is broad enough that the reference to additional finance amounts should not be necessary. Finance amount term should always reference a period while funding obligations is a cumulative term.]

i. on or before April 1, in the case of a reference period that begins on May 1, and

ii. on or before October 1, in the case of a reference period that begins on November 1.

2. In addition to complying with paragraph 1, after the scheduled final payment date in respect of the latest/last/final maturing funding obligation passes, the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination on or before January 1 and July 1 in each calendar year, until such time as all funding obligations have been paid in full.

[OLC Note: Same question as above re "any additional" finance amounts.]

[OLC Note: I'm wondering whether the underlined phrase is sufficiently clear without further explanation. As I understand it, each funding obligation will have a "scheduled final payment date" set out in an agreement, and that is the date by which the principal for that funding obligation is supposed to be paid in full… And what we are talking about here is the specific funding obligation that has the latest scheduled final payment date. Is that correct?

If the funding obligations are being incurred on a rolling basis, how do we know which one is the last one?]

[IESO NTD: We do not understand the need for this since projected maturities would be provided for in the Estimate. The broader issue is how we provide for under-collections which leave the Financing Trust short of the money it needs to service its debt obligations. While the draft regulations contemplate that this might be the result of calculation errors, unanticipated maturities or defaults in remittances of the Clean Energy Adjustment, the far more likely cause would be variances between actual and projected consumption. Is the intent to attempt to provide for this by constantly re-adjusting the Clean Energy Adjustment and the amount charged to rate payers (on which case the extent of the ability of the Board to reset rates on short notice would need to be considered), or is the intent to require that the financing trust maintain some liquidity either through bank lines, reserve accounts or equity.]

(2) For the purposes of paragraph 2 of subsection (1),

(a) the notice provided on or before January 1 shall be in respect of the months of February, March and April in the same calendar year; and

(b) the notice provided on or before July 1 shall be in respect of the months of August, September and October in the same calendar year.

(3) For the purposes of this section, the scheduled final payment date in respect of a funding obligation is the date specified in the agreement relating to the funding obligation.

(4) If the Financial Services Manager re-determines the true-up amount in respect of a reference period under paragraph 2 of subsection 4xx (1), the Financial Services Manager shall

recalculate the clean energy adjustment in respect of each of the months remaining in the reference period and notify the Board of the recalculated amount.

Board to determine rates, subs. 15 (4) of Act

6xx. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 5xx, determine the rates at which specified consumers are to be invoiced in respect of each month during the reference period, or in the case of a notice in respect of a redetermination of the clean energy adjustment, in respect of each remaining month in the reference period.

(1.1) The rates for each month shall be expressed as an amount per kWh arrived at by the Board by dividing the clean energy adjustment in respect of a month by the electricity demand of specified consumers forecasted by Board in respect of the month.

[IESO NTD: Is it now contemplated that rates will change monthly and has this been discussed with the Board and the LDCs]

(2) IESO shall provide to the Board such information as the IESO may have developed and the Board may reasonably request for the purpose of determining the forecasted electricity demand of specified consumers in respect of a month.

[IESO NTD: IESO prepares an aggregate forecast of provincial demand but does not forecast specified consumer demand. We understand that the Board, or the Board's consultant, will infer specified consumer demand from a forecast of provincial demand provided by IESO.]

[OLC note: What is the reg authority for the provision that would provide for "no liability" for the IESO: *The IESO is not liable to any person for any reason for any errors or omissions which arise out of any forecasts or any other information that the IESO provides to the OEB in good faith.*]

(3) If notice of a determination is provided, the rate shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

(4) If notice of a redetermination is provided, the rate shall be determined by the Board so that the rate takes effect,

(a) if the notice was provided before the fifteenth day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the fifteenth day in a month, on the first day of the second month following the month in which the notice was provided.

[OLC Notes:

Does the Board need to do anything else after it determines the rates (either under subs. (3) or (4)?

What if it receives notice of a re-determination but there has been no change in the CEA? Does the Board need to do anything?

What if the FSM does a redetermination during the last month of the reference period and provides notice before the 15th day of that month? What does the Board do with that information?]

IESO to receive, remit amounts, s. 16 of the Act

7xx. (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

[IESO NTD: This provision is not necessary since s 16(2) of the Act effectively requires this. In any event, the language "The IESO shall ensure that amounts received" may be read as imposing obligations upon the IESO in respect of the actions of others. Better to say that the IESO shall, in respect of the moneys it has actually received …"].

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts in accordance with the requirements of the agreements relating to the sale of the investment interests to the financing entities and agreements relating to the funding obligations.
[OLC note: Subs. (2) raises subdelegation issues. Subs. 16 (4) of the Act contemplates that the LGIC will set out in the regulation how the amounts shall be remitted… if it's really just going to be left to contract, perhaps the contract itself could handle this issue, in which case the regulation would be silent on the matter.]

[IESO NTD: Receipt and remittance will be monthly to accord with IESO/LDC's settlement processes.]

Electricity vendors to invoice, collect, s. 17 of the Act

8xx. (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are identified as such and deposited into an account established for the purposes of receiving those amounts.

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments and shall, *subject to any requirements to the contrary related to confidentiality,* make the records available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

[OLC Note: This may create another sub-delegation issue… what "requirements related to confidentiality" are you referring to? Is it in legislation? Is it in contract? Need clarification in order to assess the authority for this kind of rule.]

FAIR ALLOCATION AMOUNT

Determination of clean energy benefits

8.1xx The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on [when] and ending on [when].

[NTD- considering restating as January 1, 2005 through and including June 30th, 2017.]

Headnote TBD

8.1.1xx (1) If the determination under paragraph 4 of subsection 20 (1) is a positive number, [*the amount determined under paragraph 5 is to be the fair allocation amount for the reference period*].

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) is zero or less, *[the amount determined by subtracting the amount determined under paragraph 3 from the amounts determined under paragraphs 1 and 2 would be included in the determination under paragraph 5]*.

Determination of estimated financing costs

8.2xx (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the following types of costs:

1. [estimated?] debt service costs?

2. [estimated?] Expenses?

[OLC Note: "funding costs" is a defined term but what is meant by "expenses"?]

3. Estimated IESO deferrals?

4. Estimated funding rebates?

(2) Subject to subsection (4), the estimated financing costs in respect of a reference period shall be determined by calculating the sum of the costs set out in paragraphs 1 to 4 of subsection (1) that would become payable during the reference period, based on the following assumptions: [OLC Note: from the instructions, it wasn't clear to me whether you wanted the calculation to be a sum of the following amounts… please clarify.]

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is repaid by applying funds expected to be available to it under the Financing Plan after all other expected finance amounts for the reference period have been paid or provided for.

[OLC Note: need to check if the concept of "expected" is used relative to finance amounts elsewhere.]

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that [*the determination under section 9 or 11 of the Act in respect of a reference period resulted in a readjustment amount*].

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 4 of subsection (1), calculate the following amounts and include them in the determination of the estimated financing costs in respect of the reference period:

1. A portion of past deferred clean energy costs that should be attributed to the reference period.

2. A portion of financing costs that should be attributed to the reference period.

[OLC Note: Not sure what is meant by para. 2 -- we are trying to determine estimated financing costs through these adjustments/steps under 20 (2) of the Act so this doesn't seem to work.]

(5) For the purposes of paragraph 1 of subsection (4), the Minister shall determine the portion that should be attributed to the reference period in such a manner as to ensure that past deferred clean energy costs are recovered proportionally over the remaining reference periods.

[OLC Note: You asked for the following language to also be included in the draft as an alternative approach but I have not drafted the following because it didn't seem to be your instruction to me… I guess the following is an alternative to subs (3), (4) and (5) that I have drafted above. If you want the following instead, please instruct and I will re-visit:

xx. (1) *For the purposes of subsection 20 (2) of the Act:*

1. *The prescribed circumstances are that the determination under section 9 or 11 of the Act in respect of a reference period resulted in a readjustment amount.*

2. *The Minister shall recalculate the estimated financing costs under paragraph 2 of subsection 20(1) of the Act by adding the readjustment amount to the amount determined under paragraph 1 of Section 9.2xx and reflect such recalculated estimated financing costs in determining the sum calculated under paragraph 4 of subsection 20 (1).]*

Calculation of fair allocation amount

9xx. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

1. Electricity prices.

2. Interest rates.

3. Inflation.

4. Population. [the population of Ontario? Do you mean anticipated population growth trends for reference periods?]

5. Consumption. [consumption of what? By whom? When? Do you mean the estimated/anticipated consumption during reference periods?]

6. The useful life of assets. [any assets? specific assets?]

FINANCIAL SERVICES MANAGER

Fees, subs. 19 (3) of the Act

10xx. (1) For the purposes of subsection 19 (3) of the Act, fees may be established and charged to financing entities in relation to the recovery of amounts in respect of the following matters:

1. The costs of services provided by the Financial Services Manager, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.

2. The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.

(2) The fees mentioned in subsection (1) may provide for a fixed rate of return and a variable rate of return based on performance, both expressed as basis points of Ontario Power Generation Inc.'s investment in [which financing entity?].

(3) The variable rate of return shall be capped at plus or minus one per cent of the amount of Ontario Power Generation Inc.'s investment in [which financing entity?].

(4) In reviewing a fee proposed by the Financial Services Manager, the Board shall consider the following:

1. The methodology applied for determining the fee.

2. The methodology for benchmarking the variable rate of return provided by the fee.

3. The validity of all fixed components of the fee, including the remuneration and benefits of the staff of the Financial Services Manager.

4. The period of time during which the fee would be charged.

5. Such other matters as the Board may determine.

Board approval of fees, subs. 19 (4) of the Act

11xx. (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.

(2) The Financial Services Manager may at any time submit proposed amendments to its fees to the Board.

(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 90 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments by order or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations.

FINANCING PLAN

Readjustment amount

11.1xx (1) For the purposes of section 21 of the Act and section 9.4xx of this Regulation,

"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the fair allocation amount, if any, determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

2. Determine the amount, if any, by which the estimated clean energy costs in respect of the reference period are [or are expected to be?] reduced as a result of a determination of the Board under Part II of the Act.

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

(2) For greater certainty, if an amount determined under paragraph 1, 2 or 3 of the definition of "readjustment amount" in subsection (1) is zero or less, the readjustment amount is zero.

Financing plan, principles and assumptions prescribed under subs. 21 (3) of the Act

12xx. (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The IESO deferral for future months and the purchase price of investment interests.
2. Future transfers of specified portions of the regulatory asset.
3. The maturities, both short term and long term, of funding obligations.
4. Cash flow requirements to meet contractual obligations associated with funding obligations.
5. The future availability of refinancings and redemption opportunities.
6. Liquidity terms and conditions.
7. The future availability of currency and interest rate hedging facilities for the purposes of mitigating any differences between the estimated finance amount becoming due and payable during any reference period and the fair allocation amount determined in respect of the reference period.
8. Interest rates and financing costs related to interest rates.
9. Future availability of capital markets, including markets outside of Canada, in which funding obligations may be incurred.
10. Fees charged by the Financial Services Manager.
11. The credit ratings that are likely to be ascribed by rating agencies in respect of a funding obligation.
12. The need for and implementation of financing reserve accounts and sinking funds.
13. The basis on which any security in an investment interest may be given.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan:

1. Funding obligations shall be incurred on the best terms available at the time of incurrence for a financing transaction of the size and type contemplated by the Financing Plan.

2. The Financing Plan shall seek to create a stable platform to acquire and finance investment interests.

3. The Financing Plan shall specify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside Canada if considered by the Financial Services Manger to be appropriate in the circumstances.

4. The Financing Plan shall specify the basis upon which the Financial Services Manager is to select the currency of payments under the funding obligations and shall address measures to be taken to mitigate currency risk, including hedging transactions and adoption of minimum and maximum coverage levels, having regard to the availability of related derivatives with notional amounts corresponding to the repayment and maturity profile of the funding obligations.

5. The Financing Plan shall describe the basis upon which recovery amounts are to be applied.

6. Principal proceeds of a funding obligation must only be applied for the purposes of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests.

7. The Financing Plan shall set out the basis upon which the Financial Services Manager is to select the interest rates for the incurrence of funding obligations.

8. Subject to subsection (2.1), the Financing Plan shall set out the basis upon which the Financial Services Manager is to select the term to maturity of funding obligations.

9. The Financing Plan shall address the need for refinancing.

10. The Financing Plan shall restrict the Financial Services Manager from making any election, including election to redeem any funding obligations, if the consequence would be that the clean energy adjustment would exceed the fair allocation amount MINUS the readjustment amount, if any, for a reference period.

11. The Financing Plan shall address the incurrence of funding obligations for the provision of any funds required for finance reserve deposits and capital reserve deposits.

[OLC Note: Isn't para. 11 circular when you look at the definitions of finance reserve deposit and capital reserve deposit?]

12. Any funding obligation that by its terms may require a payment to become payable by the financing entity during a reference period shall limit the amount of the payment to

a fixed or determinable amount, which amount shall be deemed to be a finance amount for such reference period for the purposes of paragraph 1 of subsection 21 (3) of the Act.

[OLC Note: If the highlighted segment in para. 12 is supposed to add something to what constitutes the "finance amount", then this rule should be included above where we explain how the finance amount is calculated. I don't know if that's what this is about.]

13. The Financing Plan shall set out measures to realign costs and finance amounts as a result of any change in the calculation of fair allocation amounts.

14. The Financial Services Manager shall act as any reasonably prudent financial services manager would act in similar circumstances.

15. The Financing Plan shall describe the basis upon which the Financial Services Manager or its agent is to negotiate [in respect of?] and settle [in respect of?] funding obligations.

[OLC Note: "finance amount" is defined as an amount determined in accordance with the regulations -- assuming that the negotiation and settling that you're referring to above is not about actually determining the finance amount so we should clarify what is meant… negotiating payment of?]

16. The Financing Plan shall describe the timing and basis upon which finance reserve deposits, capital reserve deposits, finance reserve withdrawals and capital reserve withdrawals may be made and shall balance the need to maintain reserves in order to provide for marketable securities with the costs of holding such reserves, including on account of any potential income tax liabilities of the investment interest owners.

17. The Financing Plan shall describe the requirements applicable to any financing entity that is to purchase an investment interest, including proposed capitalization, governance and restrictions on their powers and activities, as well as structural considerations in order to minimize risk and costs.

[OLC Note: I'm not sure about the concept of "tax liabilities being recovered as finance amounts"… as drafted now, tax liabilities are taken into consideration as part of the determination of what is the finance amount. Perhaps this should just say "including any tax liabilities"?]

18. The Financing Plan shall describe the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Manager or agents and other service providers to the financing entities may be determined, allocated and paid.

19. Any contract to be entered into by the Financial Services Manager on behalf of a financing entity that provides for a payment to be made to or for the benefit of the Financial Services Manager or any person with whom the Financial Services Manager does not deal at arms' length shall demonstrably reflect on arms' length terms and conditions.

[OLC Note: Please clarify what is meant by the underlined phrase -- the contract has to include terms and conditions that create an arms' length relationship?

Rule, para 8 of sub(2),

(2.1) For the purposes of paragraph 8 of subsection (2), any repayments required to be made under the terms of a funding obligation shall not obligate any financing entity to repay an amount in relation to a reference period that would have the effect of the Financing Plan permitting incurrences of funding obligations payable in the reference period that would cause the clean energy adjustments for the reference period to exceed the fair allocation amount attributable to the reference period.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by the [xx] of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

THE REGULATORY ASSET

[OLC Note: Your instruction related to the regulatory asset (emailed on Saturday, June 17th) seems to be about the IESO deferral under 23 (1) and also the variance account in 24 (1)… see below for my proposed structure for dealing with topics relating to these ….]]

Determination of IESO deferral

12.1xx For the purposes of Section 23(1) and (2) of the Act, the IESO will determine the IESO deferral monthly, which IESO deferral may include the following amounts:

1. The difference between (i) the sum of all amounts that would have been payable in a month by electricity vendors and specified consumers pursuant to the Electricity Act, 1998 and the market rules made under section 32 of the Electricity Act, 1998 if rates had not been determined pursuant to sections 7 and 8 of the Act and (ii) the sum of all amounts payable in such same month by

specified consumers to electricity vendors as a result of rates determined pursuant to sections 7 and 8 of the Act. [NTD: intent of these changes is to make it clearer that the shortfall is not payable by electricity vendors to IESO, and in turn therefore clearer that IESO does not need to invoice for the difference (potential issue under the market rules). Also, IESO may not bill the total amount, just the reduced amount. Or it may be IESO will invoice the total amount and then record an offsetting adjustment.]

2. The IESO costs of financing required in connection with funding the difference referred to in paragraph 1;

3. Amounts incurred by the IESO on or after May 1, 2017 and before section 23 of the Act came into force relating to [early implementation of the government's fair hydro plan] [NTD: may want to reword wording in brackets];

Adjustments that may be recorded by IESO

12.2xx For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in the variance account:

1. Any amounts the IESO pays to a Financing Entity in respect of a period when all or part of the Clean Energy Adjustment is not permitted by this Act to be recovered from specified consumers. [NTD: subject to confirmation that the IESO will be paying these amounts.]

2. Any variance account balances in variance accounts established and maintained pursuant to section 25.33(7) of the Electricity Act, 1998 for the period prior to May 1, 2017. [NTD: Subsection 3 above should address post May 1/17 balances, but the IESO may need this to address pre-May 1/17 balances that were not cleared – since subsection 3 is pursuant to s 23(2) of Act which only allows for deferral amounts "incurred by the IESO on or after May 1, 2017".]

[OLC Note: …. All of the items in this list need to be characterized as "adjustments" as per the reg authority.]

MISCELLANEOUS

Investment asset, s. 29

13xx. The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustments are deposited into it.

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

14xx. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

Disclosure in marketing materials, offering documents, etc.

15xx. For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; or

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

Commencement

x. This Regulation comes into force on the day it is filed.