Version 4

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A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

CONTENTS

DEFINITIONS

Definitions

1. (1) In this Regulation,

[OLC Note re definitions: You'll see that I've removed some of the definitions because I determined they were creating some confusion. Feel free to ask me to explain any of the changes if you have questions but my intention was to communicate concepts in a way that is more direct about the relationship between various types of amounts and the period of time in which they are paid/received etc. So for example in the section dealing with finance amounts, I refer specifically to deposits/withdrawals to the specific accounts and can do so with reference to *when* those deposits/withdrawals are made, right within the section dealing with the determination of the finance amount in respect of a period of time.]

"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

[OLC Note: Just want to confirm that the use of the word "repayment" here is consistent with the defined term "repayment".]

"derivative agreements" means interest rate swaps, cross-currency swaps or other derivative agreements, and including any associated collateral, entered into in connection with, or to hedge the exposure of a financing entity under, a funding obligation.

"derivative payments" means any payments required to be made in connection with a derivative agreement, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements.

"derivative receipts" means 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.

"financing entity expenses" include fees, charges, costs, taxes, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act and includes fees charged by the Financial Services Manager;

[OLC Note: Is it necessary to include taxes in this definition, given how the term "expenses" is used in this reg?]

[OLC Note: The examples for the proposed definition of "expenses" to be drafted and would just note that the proposed examples include a reference to a $100 threshold for a reference period which won't work because amounts will have to be determined relative to portions of reference periods as well.]

“finance reserve account” means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of the funding obligation or for related contingencies;

“funding cost” means interest, commitment fees or other financing charge payable by or on behalf of a financing entity [as required under the governing documents of?] funding obligations.

[OLC Note: I have highlighted in blue several references to derivatives/interest rates/currency agreements/hedging - Please check throughout the reg to ensure that we are intentionally using different language in various provisions. If we mean the same thing in each place, then let’s be consistent. Unfortunately I don’t know enough about any of these terms to know what would be ideal -- for example I don’t know if you are intending something different when you say “derivatives” vs. “derivative agreements”.]

[OLC Note: What does “financing charge” mean? This is the only place it is used. Note we also have the term “financing cost”. I think we need to be clear about what we are talking about here…. Especially given that “funding cost” is used to determine the “financing cost”.]

[IESO Note: Our suggested language attempts to standardize language around derivatives by using the term "derivative agreement" to describe the agreement and the related obligations and "derivative payment" and "derivative receipts" to capture actual amounts paid and received. We think that payments and receipts should not be addressed directly and transparently not as part of funding costs in the case of payments and recovery amounts in the case of receipts.]

“governing documents” means, in respect of a funding obligation, the documents evidencing the funding obligations, and the related credit, security and ancillary documents;
[OLC Note: Does this work?]

“maturity date” means, in respect of a funding obligation, the date occurring after all scheduled payment dates in respect of the funding obligation, on which all outstanding principal, interest and other amounts payable under the governing documents of the funding obligation are payable;

“net repayment amount” means in relation to any period and any financing entity the amount, which may be positive or negative, equal to (i) the amounts paid by or on behalf of a financing entity to repay, prepay, redeem or purchase a funding obligation of the financing entity, including any premium, make-whole or other amount payable to give effect to the redemption, prepayment or repurchase, less (ii) the proceeds to such financing entity of all debt incurred to refinance in whole or in part any funding obligations of such financing entity.

[IESO Note: Consider whether a more detailed definition of refinancing is required. All debt incurred by a financing entity should be incurred either to finance the acquisition of an Investment Asset or to refinance existing debt. Therefore, (ii) above could be expressed as the amount by which the amount of all debt incurred in a period exceeds the purchase prices paid in that period.]

[OLC Note: Is the word "prepay" correct or should it say "repay"? I note that this seems to overlap with the definition of refinancing. [Further consideration is required]. What is different between a redemption and a refinancing?]

"repayment" means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount of a funding obligation;

[OLC Note: What does the underlined phrase mean? An agreement to repay? Just want to confirm that this "agreement to do something" is included for "repayment" but not for other amounts. It also raises some confusion where the term is used in subs. 5 (1) below - would *the provision for the payment* need to specify that the payment would be payable during the specific period of time in order for it to be included in the finance amount in respect of that period of time?]

"scheduled payment date" means, in respect of a funding obligation, a regular date, set out in the governing documents of the funding obligation, on which a payment [repayment?] is scheduled;

"tax" means [to be completed];

"tax liability" means all tax payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity authorized or permitted under the Act, including,

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

(b) activities related to an investment interest and related assets and liabilities, including the acquisition, holding, enforcement 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 its incurrence, performance, redemption, repayment or disposition, and

(d) activities related to an agreement, including the entering into, performance, enforcement, termination or disposition of derivative agreements;

"tax refund" means all amounts received by or on behalf of 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 under the Act, including activities described in clauses (a) to (d) of the definition of "tax liability".

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

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

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecasted to be reduced as a result of a determination of the Board under Part II of the Act.

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

Funding obligation

2. (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 or on behalf of a financing entity:

[OLC Note:[Please explain] why the "without duplication" concept would be necessary here… this is just a list of types of amounts and we aren't adding them up.]

[OLC Note - see below in subs. 3 (2) where it is suggested that a refinancing is a funding obligation… and I think that perhaps "amounts in respect of a refinancing" are covered under subs. 2 (2)? Does this work as intended?]

1. Any debt incurred by a financing entity for the purpose of acquiring an investment interest.

2. Any other debt incurred by a financing entity in connection with the acquisition and holding of investment assets, the incurrence of funding obligations and the activities of the financing entity under the Act.

2. Any amount raised by a financing entity for the purpose of refinancing a funding obligation.

(2) Funding obligations, including the types of amounts set out in paragraphs 1 to 2 of subsection (1), include principal , interest, fees and other amounts owing in respect of the amounts.

Refinancing

3. (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. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.

3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

[NTD to OPG - OPG to consider necessity for this provision]

CLEAN ENERGY ADJUSTMENT

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

4. 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, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

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 the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

Finance amount

5. (1) Subject to subsection (2), the finance amount in respect of a financing entity and a period of time shall be determined as follows:

[IESO Note: If there is more than one financing entity, there will need to be a separate calculation for each financing entity].

[OLC Note: Because it appears that "finance amounts" and "true-up amounts" may need to be determined in respect of portions of reference periods and not just reference periods, I decided to just make the general rule very general about determinations "in respect of a period of time". This could mean an entire reference period or one small portion of a reference period.]

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

    i. net principal repayments during the period.

[OLC Note: Consider subpara. i along with the definition of "repayment" above… See my question under that definition about "the provision for the payment of…"]

    ii. Funding costs paid during the period.

    iii. Amounts required, under the governing documents of funding obligations, to be deposited into capital accounts or finance reserve accounts during the period.

    iv. Derivative payments during the period.

    v. Financing entity expenses paid during the period.

    vi. Taxes paid during the period.

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

    i. Amounts withdrawn from capital accounts or finance reserve accounts during the period.

    ii. Funding rebates received during the period.

    iii. Derivative receipts during the period.

[IESO Note: Consider creating parallel definitions of "Actual Finance Amount, for use in relation to past periods, and "Estimated Finance Amount", for use in relation to future periods. The "Actual Finance Amount" would be strictly a cash definition. The "Estimated Finance Amount would require an estimate of cash receipts and cash expenditures, including projections around refinancing. Using the same base definition for both concepts has resulted in some obscuring of the cash nature of the Actual Finance Amount calculation.]

[OLC Note: This is now the only place where we were using the term "refinancing amount". I'm having trouble with the proposed defined term for "refinancing amount" when read in conjunction with the definition of "refinancing" in the Act - which already says that it is "the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation". Could the "refinancing amount" simply be "amounts in respect of a refinancing"?

Here is the proposed definition - what are we trying to convey here that isn't conveyed in the definition in the Act?

"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 but instead are used to repay an existing funding obligation in respect of all or any portion of the purchase price of an investment interest;]

v. Tax refunds received during the period.

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

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

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

[OLC Note: As per my previous notes, please advise regarding the meaning of "cash basis accounting method" and whether there is redundancy between the first four paragraphs here. Now that additional rules have been added and their relationship to para. 1 noted (see subs. (3)'s "despite paragraph 1") it is important that the relationship between paras. 2, 3 and 4 and para. 1 be clarified.
- Also, now that the itemized list in subs. (1) above is specific about what is paid/received/incurred etc. during the specific period of time in question, consider whether some or all of the rules in this subsection are consistent and/or necessary.]

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

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

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash finance amounts.

(3) Despite subsection (2), for purposes of estimating taxes to be paid in respect a future tax reporting period of a financing entity, such taxes may be allocated to various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

[IESO Note: Even in respect of a future period, we are trying to capture taxes when paid, including taxes paid by way of instalment, and not tax liabilities when they accrue].

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period shall be deemed to be a tax refund of the financing entity in the first reference period commencing after the particular tax reporting period.

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period exceeds the estimated taxes shall be deemed to be a tax liability of the financing entity in the first reference period commencing after the particular tax reporting period.

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply once there has been a final determination with respect to the tax liability of the finance entity in respect of the particular tax reporting period:

    i. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is decreased shall be deemed to be a tax refund of the financing entity for the first reference period commencing after the final determination.

ii. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is increased shall be deemed to be a tax liability of the financing entity for the first reference period commencing after the final determination.

(4) For the purposes of paragraph 4 of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

[IESO Note: This deeming language is not appropriate in the context of the actual Finance Amount calculation, which should be strictly an historical cash calculation].

Determining true-up amount
[NTD to OPG: Ministry concerned about volatility of pricing for rate payers. Ministry to consider further.]

6. (1) Unless all finance amounts are paid in full, the Financial Services Manager shall calculate the true-up amount in respect of each reference period.
[OLC Note to draft: need to check these provisions carefully against the language of subs. 15 (2) of the Act to ensure consistency.]

(2) The Financial Services Manager may, at any time during a reference period, determine the true-up amount in respect of the remaining portion of the reference period if,

(a) the Financial Services Manager reasonably forecasts that there will be a material shortfall in the collection of the clean energy adjustment relative to the estimated finance amount payable in respect of a reference period; and

(b) the Board has determined rates under subsection 15 (4) of the Act in respect of the reference period.

(3) The true-up amount in respect of a reference period or a portion of the reference period may be determined, as follows:

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

Where,

T = the true-up amount in respect of the period of time,

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

C = the amount representing 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 Note: We continue to be concerned about both the feasibility of a mid- Reference Period recalculation of the relevant amounts and a mid-period rate reset by the Board. In particular: (1) will information be available for irregular periods to allow for a part period calculation of the Clean Energy Adjustment (2) will LDCs be able to apply part period adjustments to customer invoices, given the differences in billing periods and billing dates (3) will not short adjustments in material amounts applied to shorter periods lead to rate volatility and (4) is not some intra-period variation to be expected in any event, given that consumption and the finance entities' cash requirements will not be constant through the period. 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. 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.]

(4) The Financial Services Manager shall, when determining the amounts described in “C” in the formula set out in subsection (3), have regard to amounts 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.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires

correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true-up amount.

Notification to Board

7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

(a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

(b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (2), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager determines the true-up amount in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of each of the months remaining in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination [as soon as possible?].

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

8. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.
[OLC Note: Legislative Counsel has determined that it would not be appropriate to repeat the wording of subs. 15 (4) of the Act - "Without changing the clean energy adjustment" due to drafting principles. ….]

(1.1) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecasted electricity consumption of specified consumers in respect of the period.

(2) For the purposes of subsection (1.1), the forecasted electricity consumption of specified consumers shall be based on forecast information provided to the Board by the IESO.

(3) If notice of a determination is provided under subsection 7 (2), 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 under subsection 7 (5), 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.

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

9. (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.

(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 transfer of the regulatory asset 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. For this type of provision to be authorized, I think the

regulation would at least have to impose some constraints on the contents of the agreements. Otherwise the determination is being subdelegated entirely to unknown entities.]

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

10. (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 deposited into a segregated account established for the exclusive purpose of receiving those amounts.
[OLC Note: Previously the language in subs. (2) was drafted for consistency with subs. 16 (2) of the Bill ("an account established for the purposes of receiving those amounts"). You've suggested changes here through the addition of the words "segregated" and "exclusive". Just want to be sure you are aware of the different language which may be interpreted to have been included to achieve a different outcome.]

[NTD to OPG: This obligation poses practical problems for small LDCs. OPG to propose threshold for this obligation. It is not viable to apply universally.]

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

(4) Subject to [any requirement to the contrary under any Act or regulation?], each electricity vendor shall make the records available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

[NTD to OPG re: Appointment, s. 18 of the Act – Ministry does not intend to address replacement of FSM at this time and absent specific circumstances where replacement is required.]

FAIR ALLOCATION AMOUNT

Prescribed period, amount

11. (1) 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 January 1, 2005 and ending on April 30, 2017.

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act are less than or equal to the amounts determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

Where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 of subsection 20 (1) of the Act.

Determination of estimated financing costs

12. (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 sum of the following amounts that would become payable during the reference period:

1. Estimated funding costs.

2. Estimated financing entity expenses.

3. Estimated funding rebates.

[IESO Note: Is this right? This is a receipt to a financing entity and an offset against funding costs]

(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

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 [paid?] by applying funds expected to be available to it under the Financing Plan after all other forecasted finance amounts for the reference period have been paid or provided for.

[OLC Note: Elsewhere we refer to the finance amounts being "paid in full", not "paid or provided for". Why the difference?]

(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 3 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 the readjustment amount that should be attributed to the reference period.

2. The financing costs that should be attributed to the adjustment amount.

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

Minister's considerations

13. 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. Electricity consumption.

5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

FINANCING PLAN

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

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

1. The determination of the IESO deferral for future months.

2. Future transfers of specified portions of the regulatory asset.

3. The maturities 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 managing currency and interest rate risks that may be associated with funding obligations.

8. Interest rates and financing entity expenses.

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 need for and implementation of financing reserve accounts and capital accounts.

(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: [OLC Note:…[T]he language below [must be further considered/reviewed] to see how it links up with the new content […] added to the reg in Draft 3 and to generally assess consistency.]

[NTD to OPG: Financing plan principles are a governance issue for the Ministry. Ministry to consider further to clarify language and expectations.]

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 or decision, including election or decision to redeem any funding obligations, if the consequence would be that the clean energy adjustment would exceed the sum of the fair allocation amount and any readjustment amount in respect of a reference period.

11. The Financing Plan shall address the incurrence of funding obligations for the provision of deposits required as described in subparagraph 1 iv of subsection 5 (1).

12. Any funding obligation that by its terms may require a payment to be made 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 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?] finance amounts.

[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 deposits described in subparagraph 1 iv of subsection 5 (1) and withdrawals described in subparagraph 2 i of subsection 5 (1) 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, including any tax liabilities that may be recovered as finance amounts.

[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, financing entity 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 <u>shall demonstrably reflect on arms' length terms and conditions.</u>

[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? Is there some precedent language in Ontario legislation that captures this kind of requirement?]

Rule, para. 8 of subs. (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, other than an obligation incurred for the purposes of refinancing to prudently and cost-effectively manage debt, 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 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

Determination of IESO deferral

15. The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:

   i. The sum of all amounts payable to the IESO 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*, which amounts are without regard to any monthly variances reported to and recorded monthly by the IESO in a variance account pursuant to section 5 of Ontario Regulation 430/04 and are without regard to the rates determined by the Board pursuant to Part II of the Act.

   ii. The sum of all amounts payable in the same month by electricity vendors and specified consumers to the IESO with rates determined under Part II of the Act. **[NTD: [NTD: we have further considered this provision and believe it is necessary to revise it in this manner to ensure the IESO deferral includes the total difference between what is payable by LDCs and the lesser amount LDCs are able to pay as a result of the Fair Hydro reduced rates. The previous manner in which we had proposed drafting this provision and in which it has been redrafted would result in the RPP variance under O Reg 430/04 not being included in the IESO deferral. We will consider this further and may have additional edits.]]**

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

3. Any variances arising or 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 language in brackets. However, it is the IESO's view that it is necessary to make provision for this amount pursuant to section 23 of the Act (and not as an adjustment pursuant to section 24) because section 23 (2) expressly provides for enacting regulations that provide for the recovery of these amounts. Section 24 does not provide for these amounts to be recovered as an adjustment under that section]**

[OLC Note: No need to repeat 23 (2) of the Act.]

Adjustments that may be recorded by IESO

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record monthly the following adjustments in a variance account:

1. All funding rebates and all other amounts paid by the IESO to a financing entity in a month.

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* and costs incurred in relation to such variance account balances. **[NTD: wording in brackets is not necessary. If balances remain in variance accounts pursuant to section 25.33 (5), then by definition such variances have not been "cleared" (i.e. ordered recovered) by the Board]**

[OLC Note: what does "that remain to be cleared" mean?]

FEES

[NTD to OPG: Ministry to consider further to find balance between OEB oversight and OPG requirements re Financial Services Manager fees]

Fees, subs. 19 (3) of the Act

17. (1) For the purposes of this section,

"incremental annual funding obligation" means the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in a calendar year.

(2) For the purposes of subsection 19 (3) of the Act, the Financial Services Manager may establish fees and charge the fees to financing entities in relation to the following matters:

1. The services provided by the Financial Services Manager to financing entities, 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.

[OLC Note: here we refer to "required or permitted" but in most places throughout the reg we refer to "authorized or permitted". Please check and confirm intention throughout the reg.]

(3) The fees mentioned in subsection (1) may include both a fixed fee and a variable fee based on performance [of what?].

(4) The fixed fee shall be equal to the cost of services provided to a financing entity plus a reasonable rate of return.

(5) Subject to subsection (6), the variable fee to be charged in respect of a calendar year shall be calculated in accordance with the following formula:

[OLC Note: Check year vs. calendar year throughout reg.]

$$A \times (B - C) \times D$$

Where,

A = the principal amount of the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in the year,

B = the forecasted interest rate for "A", as determined by the Financial Services Manager on or before the end of the calendar year prior to the calendar year in respect of which the fee is being determined and based on the term of the aggregate,

C = the weighted average interest rate for "A",

D = 5 per cent or such other per cent that is approved by the Board.

[OLC Note: What is the authority for the Board to determine a different percentage for the purposes of "D"? Shouldn't this be the FSM who does this based on subs. 19 (3) of the Act? The Board is just playing an "approval" role.]

(6) The variable fee payable in respect of a calendar year shall not be,

[OLC Note: subject to change based on what D is going to look like.]

(a) more than 1 per cent of the [value of D] multiplied by A; or

(b) less than -1 per cent of the [value of D] multiplied by A.

(7) If the variable fee is a negative amount, the amount shall be deducted from the fixed fee payable in the following calendar year in twelve equal monthly instalments.

(8) When submitting proposed fees to the Board, the Financial Services Manager shall provide the following:

1. The methodology that the Financial Services Manager has used to calculate the proposed fixed and variable fees.

2. The methodology that the Financial Services Manager has used to benchmark the proposed variable fee.

3. The period of time during which the Financial Services Manager proposes to charge the proposed fees.

4. The identity of the financing entities that would be liable to pay the proposed fees.

5. Such other information as the Board may require.

(9) This section applies with necessary modifications in respect of a proposal by the Financial Services Manager to amend fees.

[OLC Note: The instructions included the a statement that the Board is not "bound" by a methodology proposed by the Financial Services Manager, but since the Board's function is to "approve", I'm not sure what this is intended to achieve. I'm wondering if this should be included in the subsection below 11xx (4) regarding the Board's recommendations… perhaps "the Board recommend a different methodology" when it refuses to approve?]

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

18. (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.
[ENE NTD: Need to determine how to deal with the 1st fee. Understand that OPG is proposing a fixed fee for this year.]

(2) The Financial Services Manager may, from time to time but not more than once in any twelve month period, 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 120 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations [which may include recommendations regarding the methodology used to calculate the fees?].

MISCELLANEOUS

Investment asset, s. 29

19. 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

20. 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.

21. 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

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