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ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FEES

Definitions

1. (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"funding tranche" means an issuance of funding obligations of a particular class or type, all of which have the same terms, other than an issuance of funding obligations to the Financial Services Manager;
[OLC Note: Instructions are to add "other than funding obligations issued to the Financial Services Manager" to the definition of "funding tranche". I'm not sure what this means.]
[NTD for LC: Financing entities will issue funding obligations in the form of "senior debt" (issued to third party lenders) and "subordinated debt" (issued to OPG). The FSM is not to get a variable fee based on any debt issued to OPG. Since "funding tranche" is only used in connection with the variable fee (or the variable fee component of a combined fee), we can adjust the definition to back out funding obligations issued to the FSM.]

"market comparable fees" means fees, expressed as an annual percentage rate, charged by full-service managers of funds, including securitization vehicles, pension funds and other investment funds, hedge funds or other similar funds, in Canada or another jurisdiction in North America that is determined by the Board, for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

(a) the type of services provided,

(b) the scope of the services provided,

(c) the level of the services provided, and

(d) the dollar amount of assets under management;

"market comparable forecast interest rates" means, in relation to a funding tranche, interest rates charged by lenders in Canada for a debt obligation that,

[NTD for LC: Please include a note saying "We understand that OPG would like to delete "charged by lenders in Canada". We have left in those words pending OPG confirming that they would like the words deleted, and explaining why they would like the change.]

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche in terms of commencement and maturity,

ENE LSB Note: Change made to reflect policy instructions from Energy

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing.

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities.

ENE LSB Note: Removal of s. 1.1 - Change made to reflect policy instructions from Energy

Fees that may be established, charged

2. (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities.

(2) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation.

GENERAL FEE FOR 2017

Submission re general fee for 2017

3. (1) The Financial Services Manager shall submit to the Board, on or before February 28, 2018, the proposed fee for the period beginning on June 1, 2017 and ending on December 31, 2017.

(2) The proposed fee shall be [$3 million] plus the amount of any costs and expenditures incurred during the period mentioned in subsection (1) by the Financial Services Manager in relation to the management and administration of financing entities and the investment asset, including costs and expenditures,

[NTD for LC: Please include a drafting note that says "OPG to confirm amount"]

(a) in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

(b) on behalf of any financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(c) incurred in relation to a management agreement between the Financial Services Manager and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(3) The costs and expenditures referred to in subsection (2) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

Commented [DS1]: **NTD for LC: This should be broad enough to cover financing entities that the FSM contemplates establishing. Some costs may be incurred in relation to financing entities that don't yet exist. It is also possible that costs could be incurred for financing entities that the FSM contemplates establishing but ultimately does not establish.**

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Direct costs of the Financial Services Manager for employees whose work for the Financial Services Manager consists exclusively of the provision of the services described in subsection 2 (1) to financing entities.

Board review of general fee for 2017

4. (1) The Board may,

(a) approve the fee proposed under section 3;

(b) refuse to approve all or a portion of the amount included in the proposed fee relating to any costs and expenditures and approve the remainder of the proposed fee.

(2) The Board may refuse to approve all or a portion of an amount relating to costs and expenditures if the Board is of the view that it was not incurred in relation to the management and administration of financing entities and the investment asset.

Charging of general fee for 2017

5. (1) If the Board approves a fee under section 4, the fee is payable no later than 30 days following the last day of the month following the month of the Board's approval.

(2) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager.

FEE FOR JANUARY 1, 2018 TO MARCH 31, 2019

Submission re general fee for January 1, 2018 to March 31, 2019

6. (1) The Financial Services Manager shall submit to the Board, on or before November 15, 2017, the proposed fee for the period beginning on January 1, 2018 and ending on March 31, 2019.

(2) Subject to sections [x], the Financial Services Manager shall establish the proposed fee for the period mentioned in subsection (1) as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing:

$$(A \times (B - C)) \times 0.10$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

3. Calculate the amount that is 0.075 per cent of the average monthly funding obligation for each month in the period mentioned in subsection (1).

4. Calculate the sum of the amount determined under paragraph 2 and the amounts determined under paragraph 3.

(3) Despite paragraph 1 of subsection (1), if the circumstances set out in Column 1 of the following Table apply during the period mentioned in subsection (1), the rules set out opposite those circumstances in Column 2 of the Table apply:

Item	Column 1 Circumstances	Column 2 Rules
1.	The sum of the average monthly funding obligations for the period is $10 billion or less.	The result under paragraph 2 of subsection (2) shall be adjusted to an amount that is not more than 1 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing. The result under paragraph 2 of subsection (2) shall be adjusted to an amount that is not less than -1per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing.
2.	The sum of the average monthly funding obligations for the period is greater than $10 billion.	The result under paragraph 2 of subsection (2) shall be adjusted to an amount that is not more than 2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing. The result under paragraph 2 of subsection (2) shall be adjusted to an amount that is not less than -2 per cent of the amount that is 5 per cent of the sum of the principal amounts of funding tranches issued in the period, other than any funding tranches that constitute a refinancing.

Board review of general fee

7. (1) The Board may,

(a) approve the fee proposed under section 6; or

(b) refuse to approve the fee based on, the Board's view that any forecast interest rate used for the purposes of paragraph 1 of subsection 6 (2) is materially inconsistent with market comparable forecast interest rates.

[NTD for LC: Para. (ii) is not applicable here. The "base fee" component of the 15-month fee will not be subject to the "market comparable fees" review. That only applies for 2019 and beyond.]

Commented [DS2]: **NTD for LC: Is there a reason for using slightly different wording here (the highlighted words) than the equivalent in ss. 9.2(4)(b)? If not, please use consistent wording in both places.**

[OLC Note: Does the Board provide recommendations etc. if it refuses to approve?]

[NTD for LC: Yes. Please include here a new subsection that is comparable to ss. 9.2(5). Don't we also need a provision that says that if the Board refuses to approve a fee and the FSM re-submits, then the process will be followed all over again until the Board approves a submitted fee? Presumably that would apply everywhere in this reg. the FSM is required to re-submit because the Board has refused to approve a submitted fee.]

Charging of general fee

8. (1) If the Board approves a fee under section 7, the fee is payable no later than 30 days following the later of March 31, 2019 or the last day of the month in which the Board's approval is given.

(2) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager.

FEE FOR APRIL 1, 2019 TO MARCH 31, 2020 AND SUBSEQUENT YEARS

Submission re base and variable fees for 2019-2020, subsequent years

9. (1) The Financial Services Manager shall submit to the Board, on or before February 28, 2019 and on or before February 28 in each subsequent year, the proposed base fee and variable fee for the period beginning on April 1 in the year of the submission and ending on March 31 in the following year.

[NTD for LC: Let's require the submissions by February 28, not March 31. That leaves time for the Board's review, while avoiding the leap year issue since all Februarys have at least 28 days.]

(2) In this section and sections 9.1, 9.2 and 9.3, a reference to a "year" means the 12-month period beginning on April 1 and ending on the following March 31.

Base fee

9.1 (1) Subject to sections [x], the Financial Services Manager shall establish the proposed base fee for each month in a year by determining the amount that is 0.075 per cent of the average monthly funding obligation for the preceding month.

[NTD for LC: I have received policy instructions to have the 0.075 per cent only apply for the 15-month period contemplated in s. 6 above. Starting for 2019, the FSM shall (subject to the provisions for Board approval) establish the proposed base fee for each month in a fiscal year as the fee that it considers to be consistent with market comparable fees. There should not be any "reasonably" qualifier here – i.e. we don't want to say "reasonably considers". The FSM is free to make submissions in support of whatever fee it considers to be consistent with market comparable fees.]

(2) The Board may,

(a) approve the proposed base fee; or

(b) refuse to approve the proposed base fee if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees.

(3) When determining whether the proposed base fee is materially inconsistent with market comparable fees, the Board shall apply the following rules:

1. Whenever possible, the Board shall determine the average of at least five fees that satisfy the definition of "market comparable fee" in subsection 1 (1).

2. Whenever possible, the majority of the fees included in the average under paragraph 1 shall be fees charged by full-service managers of securitization vehicles.

(4) If the Board refuses to approve a proposed base fee,

(a) the Board may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including details concerning the market comparable fees that the Financial Services Manager considered.

Variable fee

9.2 (1) The Financial Services Manager shall establish the variable fee for a year as follows:

1. Subject to subsection (2), apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.10$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite those circumstances in Column 2 of the Table:

Item	Column 1 Circumstances	Column 2 Rules
1.	The average annual funding obligations are $10 billion or less.	The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation.
2.	The average annual funding obligations are greater than $10 billion.	The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.

[NTD for LC: The policy clients have decided not to specifically require what is set out in ss. (3) above. It will be implicit anyway, in that we want to address what happens if a variable fee submission doesn't contain a forecast interest rate for a funding tranche that is ultimately issued in the period in question (see comments in that regard in your yellow highlighted passages at the end of this document).]

(4) The Board may,

(a) approve the proposed variable fee; or

(b) refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of x is materially inconsistent with market comparable forecast interest rates.

(5) If the Board refuses to approve the proposed variable fee,

(a) the Board may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was inconsistent with market comparable forecast interest rates; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with market comparable forecast interest rates.

Charging of base and variable fees

9.3 (1) If the Board approves a fee under section 9.1 or 9.2, the fee is payable,

(a) in the case of a base fee, no later than 30 days after the end of the month for which the fee is payable;

(b) in the case of a variable fee for a year, in the following year in twelve equal monthly instalments that coincide with the payment of the base fee for each month.

(2) If the variable fee for a year is a negative amount, it shall be deducted in twelve equal monthly instalments from the base fee payable in the following year.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on,

(a) in the case of a base fee, the financing entity's proportionate share of the average principal amount of funding obligations for the applicable period; and

(b) in the case of a variable fee, the portion of the variable fee attributable to the funding tranches issued by the financing entity.

FEES FOR COSTS AND EXPENDITURES

Fees for costs and expenditures, submission to Board

10. (1) The Financial Services Manager shall submit to the Board a proposed fee for costs and expenditures,

(a) no later than March 31, 2019, in respect of costs and expenditures incurred during 2018; and

(b) no later than March 31 in each subsequent year, in respect of costs and expenditures incurred since the most recent submission under this section.

(2) The fee may be established to recover the amount of costs and expenditures incurred by the Financial Services Manager in relation to the management and administration of financing entities and the investment asset, including costs and expenditures,

(a) in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

(b) on behalf of any financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(c) incurred in relation to a management agreement between the Financial Services Manager and any financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(3) The costs and expenditures referred to in subsection (2) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Subject to subsection (4), direct costs of the Financial Services Manager for employees whose work for the Financial Services Manager consists exclusively of the provision of the services described in subsection 2 (1) to financing entities.

(4) Costs referred to in paragraph 9 of subsection (3) are not recoverable as costs and expenditures if they were incurred in 2019 or a subsequent year.

(5) The submission shall include written confirmation from the Financial Services Manager's external auditor or another external auditor of the following:

1. That the amounts of the costs and expenditures that the Financial Services Manager seeks to recover through fees, as set out in the submission, are accurate.

2. That the amounts of the costs and expenditures, as set out in the submission, were incurred by the Financial Services Manager.

3. That, except in the case of amounts referred to in paragraph 9 of subsection (3), the amounts were paid or payable to third parties.

Board review of fee for costs, expenditures

11. (1) The Board may,

(a) approve the fee proposed under section 6.3;

(b) refuse to approve all or a portion of the amount included in the proposed fee relating to any costs and expenditures and approve the remainder of the proposed fee.

(2) The Board may refuse to approve all or a portion of an amount relating to costs and expenditures if the Board is of the view that it was not incurred in relation to the management and administration of financing entities and the investment asset.

Charging of fee for costs, expenditures

12. (1) If the Board approves a fee under section 6.4, the fee is payable no later than 30 days following the last day of the month following the Board's approval.

(2) Where there is more than one financing entity, the portion of the fee allocated to and payable by a financing entity shall be based on a reasonable allocation as determined by the Financial Services Manager.

Commencement

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

OLC Note: I haven't had time to deal with the following provisions that were included in previous drafts. Please confirm if you want to retain these provisions and if so, to which time periods they should apply.
[NTD for LC: Yes, we want all of these provisions.

The "5.5 (1) and (2)" provision should apply to the general fee for the 15-month period, and to the base fee for each fiscal period starting with 2019.

The "9.1 (1) and (2)" provisions should apply starting with the 2019 fees (base, variable and costs).

The last two provisions are covered in drafting notes below.]

Base fee, pending Board approval of proposed base fee

5.5 *(1) If the Board has not approved a proposed base fee by the first day of the year for which the proposed base fee would be charged, the Financial Services Manager may continue to charge the base fee that was most recently approved by the Board, if any base fee was previously approved.*

(2) If a proposed base fee for a year is approved by the Board after the first day of the year, the Financial Services Manager shall adjust the base fee in the month following the month in which the Board approves the proposed base fee, to reflect the difference between the base fee charged to date and the base fee approved by the Board for the year to date.

In-year amendments to base fee or variable fee

9.1 *(1) The Financial Services Manager may, no more frequently than once in any consecutive twelve month period, make submissions to the Board to amend any fees approved by the Board, and the provisions of section [5.1]. [6.1] or [7.1], as applicable, apply in respect of the submissions.*

(2) If the Board approves an amendment to a fee under subsection (1), the fee as amended may be charged starting in the month following the month in which the Board approved the amendment.

[NTD for LC: We do want to include the two provisions below. They will apply everywhere in this reg. that contemplates a variable fee (or "variable fee" component of a fee) – i.e. sections 6 and 7, and 9.2.]
From section dealing with variable fees:

(4) The Financial Services Manager may submit the forecast interest rate for a funding tranche later than October 1 but before such date as may be specified by the Board if, subsequent to the initial submission to the Board in respect of a year, the Financial Services Manager determines that the funding tranche may be issued in the year and it was not contemplated in the initial submission.

Commented [DS3]: **NTD for LC: This date would be Nov15/17 for purposes of s. 6 and 7, and Feb. 28 for purposes of s. 9.2.**

Commented [DS4]: **NTD for LC: This would be the 15-month period for purposes of s. 6 and 7, and an Aprl – Mar31 year for purposes of s. 9.2.**

Commented [DS5]: **NTD for LC: Same comment as above.**

(5) The Board may, instead of specifying a date for the purposes of subsection (4), determine the forecast interest rate for the funding tranche, having regard to the forecast interest rates submitted by the Financial Services Manager for other funding tranches anticipated to be issued in the applicable period.