# Ontario Fair Hydro Plan

## Limited Guarantee from the Province

[Date]Appropriate cover page to be inserted

# Context – should be reviewed and updated as required

- Ontario Fair Hydro Plan Act ("**Act**") permits debt financings through one or more [special purpose] financing entities, to be managed by OPG
  - Proceeds of financings are used to acquire portions of the Fair Hydro regulatory asset ("**Investment Interests**") from IESO
  - Amounts owing will be serviced from "clean energy adjustments" ("**CEAs**") collected from "specified consumers"
- Hydro Trust [will be] established to facilitate the first financing transactions
  - Some combination of short-term "warehouse financings" and long-term notes will be issued
  - OPG, funded by the Province, will acquire subordinated debt issued by Hydro Trust
  - Proceeds raised before December 31st are expected to be $•M ($•M from external investors)
  - Future issuances will follow the same pattern (51% external/senior; 49% OPG/subordinated)
- Payment obligations will be owed to noteholders, lenders, credit enhancers, derivative counterparties, service providers, etc.
  - Payment obligations will be governed under a Trust Indenture
  - Hydro Trust payment obligations under the Trust Indenture are "Obligations Secured"
- Limited Guarantee from the Province of obligations payable by Hydro Trust when due
  - Province pays only upon a "Protection Event"
  - Limited Guarantee applies to almost all Obligations Secured
  - Certain "**Adherence Conditions**" to be satisfied before Limited Guarantee willy apply to material obligations
- Two relevant agreements:
  - i. Change of Law Protection Agreement ("**Protection Agreement**")
  - ii. Change of Law Process Agreement ("**Process Agreement**")

# Limited Guarantee from the Province

- Triggered by a "**Protection Event**": Either:
  - There is a change of law (by the Legislature, LGIC, Ministers, government officials, government appointed boards, etc.) or implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or and entity controlled by the Province that materially and adversely affects either (1) the ability of Hydro Trust to receive CEA cash flows or (2) the Protection Agreement or any Obligation Secured
  - A court of competent jurisdiction determines that any part of the OFHPA or the related regulations are *ultra vires* or invalid in a way that materially and adversely affects the ability of Hydro Trust to receive CEA cash flows and that in fact results in a deficiency such that Hydro Trust cannot pay Obligations Secured when they become due

- **Not covered by the Limited Guarantee:**
  - Amounts required to be deposited into collateral or reserve accounts established under the Hydro Trust program to credit enhance or provide liquidity for ultimate payment of Obligations Secured
  - Certain residual payments to OPG under the "payment waterfall"

- **Term:** Until all applicable Obligations Secured are paid in full

# Adherence Conditions

- Certain minimal conditions will apply before the Limited Guarantee will attach to applicable Obligations Secured:
  - **Incurrence of indebtedness to fund ownership of an Investment Interest**
  - **Entry into ISDA master agreements**
  - **Entry into service contracts with term > 3 years and aggregate payments >$5M that are not terminable on giving 3 years notice or less**

- Those conditions are:
  - Must be an Obligation Secured under the Trust Indenture
  - Delivery of officer’s certificate by OPG to Indenture Trustee confirming compliance with internal processes as between OPG and the Province in connection the Limited Guarantee (under the Process Agreement)
  - Province has not delivered a “Suspension Notice”

# Process between Province and OPG

- Process Agreement between Province and OPG
  - Sets out informational requirements and supporting affirmations regarding incurrence or amendment of Obligations Secured
  - Contemplates some (limited) rights of Province to comment on disclosure and terms of Obligations Secured
  - Provides for OPG executive officer affirmation regarding certain matters (in a "**Process Certificate**")

- Delivery of Process Certificate by OPG executive officers to the Province setting out:
  - Material terms of obligations (incurrence or amendment)
  - Confirmation that terms are "**Substantially in the Form**" of the "**Reference Documentation**"
  - Confirmation that the offering document is "**Substantially in the Form**" of the "**Reference Documentation**"
  - Confirmation that no breach of the Process Agreement has occurred
  - Confirmation that the maximum payment amounts due in the future under the obligation plus other outstanding amounts will not exceed the "**Protection Agreement Maximum**"
  - Confirmation that any disclosure referring to the Protection Agreement or Process Agreement was made available to the Province
  - Confirmation as to reasonableness, arm's length terms and conditions, and compliance with the Act and the Financing Plan

- Suspension Right
  - Uncured breach of Process Agreement or breach by any party of other program agreements allows Province to suspend Limited Guarantee for new obligations, other than for refinancings
  - Exercise of suspension right does not impact prior Hydro Trust obligations covered under the Limited Guarantee

# Obligation of Province on Protection Event

- Make payments on Limited Guarantee
- Payments replicate stream of CEAs to pay amounts due and payable by Hydro Trust
- In event of an acceleration of any Obligation Secured, Province would pay acceleration amounts, capped at scheduled payment amounts (without acceleration) plus an additional amount up to the “fair allocation” in the aggregate [should this reference regulation?]
- Province will be subrogated to rights of the creditors of Hydro Trust to the extent of performance under the Limited Guarantee

# Obligations of OPG

- Process Agreement obligates OPG, but without limiting protections under existing indemnity agreement
  - Province has indemnified OPG, its subsidiaries, and each of their respective directors, officers and employees from liability resulting from activities under the Act and activities of Hydro Trust pursuant to an Indemnity Agreement
- If there is any conflict between the Process Agreement, the Protection Agreement and the existing Indemnity Agreement in respect of any matter relating to the Province's indemnification obligations in favour of OPG, the Indemnity Agreement is paramount

# Provincial Approval Process

- Authorization under Section 5(3) of OFHPA
  - Section 5(3) provides that LGIC may by order authorize the Minister of Energy and Minister of Finance, acting together on behalf of the Province, to agree to guarantee or indemnify obligations associated with an Investment Interest
- Order in Council 1981/2017 made pursuant to subsection 5(3) of the OFHPA
  - The OIC authorizes the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of a financing entity established under the OFHPA associated with investment interests acquired by a financing entity.
- [Should TB approval be included here?]
- Approval under section 28 of *Financial Administration Act* will be required prior to entry into the Protection Agreement and the Process Agreement by the Minister of Finance and the Minister of Energy.

# Accounting Implications

- [Please complete. Please describe absence of lump-sum recognition and other disclosure/notes that would be required in Province's financial statements.]

- [Please also complete following slide in respect of accounting risks.]

# Risks

- Accounting
  - [Please add a sub-bullet on accounting risks (e.g., control limitations; loss of off-balance sheet treatment if a Protection Event occurs)]

- Province dependent on OPG in relation to most key matters relating to the Limited Guarantee
  - Less power/information than would typically be afforded to a guarantor
  - Significant reliance on OPG to deliver timely, accurate information
  - Province has no say on financing decisions if permitted by the Financing Plan **[, except in narrow circumstances]**

- Even without a change of law by the Legislature, a court determination may trigger a Protection Event

- Possible criticism for wholesale delegation to OPG; although accounting considerations and the Act itself lead to this outcome

- Possible opportunistic litigation by Hydro Trust creditors incentivized by spread differentials to trigger a Protection Event