FAIR HYDRO PLAN – DEALERS TOP ISSUES

General

1. **Market Disruption**. In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

2. **Fair Allocation Plan**. There is a strong preference not to have the "Fair Allocation Plan" form a part of the regulatory structure. If it is required, it will need to be finalized with all required approvals before any debt is incurred. The Fair Allocation Plan cannot be changed so as to adversely affect the recovery of Finance Amounts and Transition Charges owing to any Regulatory Asset Owner. Also, the Fair Allocation Plan cannot be a cap on the Financing Plan in terms of any Funding Obligations, Refinancings, Finance Amounts or Transition Charges which may be required for any Regulatory Asset.

3. **Financing Plan**. The legislation must not be overly prescriptive in terms of the principles, parameters, requirements and conditions for establishing the Financing Plan. Also, there needs to be sufficient flexibility to permit the Financing Plan to change over time to address the need for future Funding Shortfalls and Refinancings.

4. **Provincial Commitments**. The Province must commit in the legislation not to amend or repeal the statute (<u>including</u> the regulations), in the case of an amendment, where that amendment adversely impacts the ability of a Financing Entity to fully recover a Regulatory Asset in order to fully repay all indebtedness incurred by a Financing Entity to purchase such Regulatory Asset ("Change of Law"). The legislation must require the Province to appoint a successor to carry out the duties of IESO in the event is IESO is restructured, dissolved or becomes insolvent. The Province must also provide a contractual guarantee (i) in the event there is a Change of Law or all or a portion of the legislation is *ultra vires*, at the lenders option, the Province will either step in and pay the debt service (principal and interest) on the outstanding debt until maturity or payout the entire debt including any make-wholes, and (ii) that the IESO will perform its duties as servicer under any sale and servicing agreement with a Financing Entity.

5. **Limitation on Deferrals**. The legislation must put a time limit on the period during which IESO can continue to create deferrals under the program. This would provide investors with a necessary assurance that at some point ratepayers will be required to pay down the Regulatory Assets rather than IESO continuing to create deferrals in order to service the debt issued by the Financing Entities.

6. **Fixed Recovery Timeframes**. There can be no additional impairment on the ability to recover Regulatory Assets after the first **[five]** years of the program (that is, no limit on year over year increases). There must also be an outside date for recoveries set out in the regulation (i.e. 2047).

7. **Limited OEB Role**. The OEB must not have any approval rights or oversight or other role over Regulatory Assets, Funding Costs, Transition Charges or the Financing Plan; however, to the extent required for constitutional reasons or in order for Regulatory Assets to be treated as an asset of the Financing Entity, it would be possible for the OEB to (i) approve the Fair Allocation Plan at the outset of the program and (ii) have limited oversight over the Financing Entity's expenses so long as such oversight may not extend to the Finance Amount necessary to recover all principal and interest and other financing charges on the debt incurred by the Financing Entity to purchase the Regulatory Asset.

8. **Possibility of Multiple Financing Entities**. While the Dealers preference would be to have a single Financing Entity own all of the Regulatory Assets, the legislation may provide flexibility for there to be more than one Financing Entity, provided that each of which is permitted to (i) purchase and aggregate Regulatory Assets, (ii) disaggregate and sell Regulatory Assets, (iii) grant security over its Regulatory Assets so as to enable the grantee of the security interest to realize on its security by selling the Regulatory Asset.

9. **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until the earlier of (i) one year after all of its debt is repaid and (ii) the date designated by the Minister for the winding up, liquidation or dissolution of the FE (in which case the Province's guarantee would apply).

Transition Charges

10. **Priority of Transition Charges**. The Transition Charges must take priority over other amounts recovered by LDCs. LDCs must not have any rights of set-off in respect of amounts collected in respect of any Transition Charges.

11. **Sequestration of Transition Charges**. Any court in the Province must, upon application of a Regulatory Asset Owner, order the sequestration and payment of Transition Charges collected by any LDC or the IESO.

12. **Beneficiaries Defined**. There must be certainty around the category of Ratepayers who will benefit from the Fair Hydro program and who will ultimately pay for the program (although it may be that this could be left to the Regulations). Once the category of Ratepayers is established at the outset of the program, the Province cannot expand or reduce the category of Ratepayers benefitting from the program unless such change does not in any way adversely affect the rights of any Regulatory Asset Owner under an Regulatory Asset.

13. **True-Up of Transition Charges**. Transition Charges need to be trued-up at least semi-annually, but true-ups may need to be applied more frequently to ensure repayment of Funding Obligations as they become due and payable.

14. **Retroactive True-up**. In order to ensure that only the category of ratepayers that benefits from the program is left paying for the program, there is likely a need for a retroactive true up by IESO so that the amount deferred by IESO in respect of the Fair Hydro program is the correct amount (in other words, amounts deferred in respect of other programs or variances are not covered by Fair Hydro ratepayers and vice versa).

15. **Allocation to Ratepayers**. The Transition Charges must be allocated to all Ratepayers on a unit (*i.e.* per kWh) basis, not fixed charge per Ratepayer, in order to reduce the risk associated with a challenge to the enabling legislation.

16. **Invoicing and Collection of Transition Charges**. Transition Charges must be separately identified in all invoices from the IESO to the LDCs. It would also be preferable that Transition Charges also be separately identified in invoices from LDCs to Ratepayers (as opposed to Transition Charges being included in the RPP payable by Ratepayers). All Transition Charges collect by LDCs and the IESO must be segregated from all other amounts received and deposited into a Regulatory Asset Account.

Regulatory Asset

17. **Regulatory Asset Definition**. The Regulatory Asset must be defined to reflect both the recording of a deferral and the right to collect Transition Charges. Transition Charges must be separately tracked **[by the IESO]**. It is not necessary for the chain of liability to run all the way to the Ratepayer level, so long as the IESO's and LDCs' obligations are clear in terms of invoicing and collecting Transition Charges. There cannot be any requirement for a Financing Entity to enter into a contract with LDCs.

18. **Ownership of Regulatory Assets**. The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG). For greater certainty, the IESO would not be permitted to own any Regulatory Assets.

19. **No Obligation to Buy**. A Financing Entity will not be required to purchase a Regulatory Asset from IESO unless it is able to finance the purchase.

20. **Sale of Regulatory Asset is Final**. The legislation must provide that any transfer, sale, conveyance or assignment of a Regulatory Asset to a Financing Entity is conclusively considered to be a sale for all purposes and may not be re-characterized or found by a court to be a loan or any other arrangement.

21. **Security Interests**. The assignment and granting of a security interest over Regulatory Assets and all proceeds derived therefrom either (i) must be exclusively governed by the enabling legislation which should provide for the perfection and priority of such assignments and security interests in detail in such legislation, notwithstanding any provisions of the PPSA or any other provincial statute or, (ii) must deem the Regulatory Asset to be an "intangible" for purposes of the PPSA and provide that (a) no perfection is required under the PPSA to perfect the assignment of the Regulatory Asset to a Financing Entity, (b) the sale of a Regulatory Asset by IESO to a Financing Entity shall be free and clear of any security interest that IESO may have purported to grant over such asset, (c) only a Financing Entity may grant a security interest over the Regulatory Asset, and (d) perfection and priority of a security interest granted by a Financing Entity in a Regulatory Asset is governed by the PPSA on the basis that the Regulatory Asset is an "intangible" thereunder.