Version 3

<u>Torys/OPG Comments – April 23, 2017</u>

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

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble
The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

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[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

CONTENTS

PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; (“French”)

“clean energy initiative” means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; (“French”)

“electricity vendor”[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; (“French”)

“fair adjustment” means the adjustment to the rate payable for electricity determined in accordance with Part II; (“French”)

“fair allocation amount” has the meaning ascribed to it in section 15xx(1.1);

“Financial Services Manager” means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; (“French”)

“financing entity” means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

“Financing Plan” means the plan prepared under section X, as amended from time to time in accordance with this Act; (“French”)

[3] Note - this is similar to the definition of “electricity vendor” in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French") "refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

   v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.] [NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***]** **[NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

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[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017.*

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

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