CONFIDENTIAL
FOR DISCUSSION PURPOSES ONLY

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;

"comparison fees" means typical fees charged by [service providers? managers?] in Ontario for services that are similar to the services provided by the Financial Service Manger under the Act in terms of,

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other investment funds, hedge funds and other similar funds in Ontario,

(b) the scope of the services provided, and

(c) the level of the services provided;

"net annual funding obligation" means, in respect of a year, the sum of the principal amounts of funding obligations incurred by financing entities in a year, other than any refinancing;

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

Commented [ESP1]: May not be necessary to restrict this to Ontario.

OPG suggest OEB may use "Canada and any other jurisdiction as may be determined by the Board"

See OPG Blackline.

Commented [ESP2]: OPG wish to add:

(d) the amount of assets under management

Commented [ESP3]: OPG suggest adding definition for "forecast interest rate". See OPG Blackline

Commented [ESP4]: Note: OPG suggest deleting "other than any financing"

$$(A + B) / 2$$

Where,

A = the sum of the balances at the start of the month of the principal amount of all funding obligations incurred by financing entities,

B = the sum of the balances at the end of the month of the principal amount of all funding obligations incurred by financing entities.

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 funding obligations incurred or that are planned to be incurred by the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3, 4 or 5], as the case may be, and a variable fee calculated under section [6].

(3) For the purposes of subsection 19 (3) of the Act, fees may be established and charged by the Financial Services Manager to financing entities for the recovery of costs and expenditures, as provided for in section 7.

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

Base fee, 2018

3. Subject to section 5.1, the base fee for a month in the year 2018 shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

Base fee, after 2018, average annual funding obligation greater than $10 billion

4. (1) This section applies for the purpose of calculating the base fee for a month in any year following 2018 if the average annual funding obligation for the preceding year was greater than $10 billion.

(2) Subject to section 5.1, the base fee for the month shall be calculated using the following formula:

$$(0.08 \times B) / 12$$

Commented [ESP5]: OPG edited to

A = the sum of the balances, as at 12:00 am on the first calendar day of the month,
of the principal amount of all outstanding funding obligations for all financing entities,
B = the sum of the balances, as at 11:59 pm on the last calendar day of the month, of
the principal amount of all outstanding funding obligations for all financing entities.

Commented [ESP6]: OPG suggest moving up the definitions of such costs from section 7 and provided alternate language – see OPG's Blackline.

Commented [ESP7]: Per Dan this is a typo. It should read (0.01 X B)12

Commented [ESP8]: From OFA:

10bps is high. We recommend a compromise of 5bps to be reviewed in a year. As background, market investment manager fees are 1-2bps for passive fixed income funds.

Commented [TC9]: Should read 0.0008 (8 bps)

Where,

B = the average monthly funding obligation for the preceding month.

Base fee, after 2018, average annual funding obligation $10 billion or less

5. (1) This section applies for the purpose of calculating the base fee for a month in any year following 2018 if the average annual funding obligation for the preceding year was equal to or less than $10 billion.

(2) Subject to section 5.1, the base fee the month shall be calculated using the following formula:

$$(0.1 \times B) / 12$$

Where,

B = the average monthly funding obligation for the preceding month.

Board review of base fee

5.1 If the Board, after reviewing a submission in respect of a proposed base fee by the Financial Services Manager under section 9, is of the view that applying the applicable formula set out in section 3, 4 or 5 results in a base fee that is inconsistent with prevailing comparison fees, the Board may refuse to approve the proposed fee and may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with comparison fees.

Variable fee

6. Subject to subsection (2) and section 6.1, the variable fee for a year shall be the sum of the amounts of each tranche of net annual funding obligations for the year, calculated by using the following formula:

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the tranche,

B= the forecast interest rate for the tranche, as determined by the Financial Services Manager before the start of the year, based on the term of the tranche, and

C = the actual interest rate for the tranche.

Commented [TC10]: Should read 0.001 (10 bps)

Commented [ESP11]: This term will need to be defined. It is not mentioned in other OFHPA leg. / regs.

Commented [ESP12]: From OFA:

Variable Fee: We recommend going back to the original proposal of "… not more than plus/minus 1% … on the net annual funding obligation …" That means deleting column 1 and item 2 of the table.

(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 the 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.

Board review of variable fee

6.1 If the Board, after reviewing a submission in respect of a proposed variable fee by the Financial Services Manager under section 9, is of the view that the forecast interest rate used for the purposes of the formula set out in subsection 6 (1) is [unreasonable], the Board may refuse to approve the proposed fee and may make recommendations to the Financial Services Manager regarding the forecast interest rate that is reasonable.

Fees for costs and expenditures

7. (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred in connection with the Financial Services Manager's duties under the Act in relation to the financing entity or under any management agreement with the financing entity.

(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.
2. Banking 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. Filing or registration fees.

Commented [ESP13]: Per OFA:

Pass through costs as outlined in the draft regulations appear reasonable. Including tighter language that prevents any OPG costs from being passed through makes sense.

As further due diligence it may be advisable for the for the Financing Entity as part of its annual audit or as a separate assurance audit to have the external auditors opine whether the actual pass through costs of the Financing Entity in each fiscal year is in accordance with the regulations.

8. Fees of any third party independent consultants required to be retained under the Act.

Board review of fees for costs, expenditures

7.1 If the Board, after reviewing a submission in respect of a proposed fee for costs and expenditures by the Financial Services Manager under section 9, is of the view that the proposed fee is in respect of costs and expenses that were [not prudently incurred, or not incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities], the Board may refuse to approve the proposed fee or a portion of the proposed fee and may make recommendations to the Financial Services Manager regarding the proposed fee.

Charging of fees

8. (1) In charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month; and

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

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

(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 its proportionate share of the average principal amount of funding obligations for the applicable period.

Submissions to Board re fees

9. (1) The Financial Services Manager shall make submissions to the Board in respect of the fees proposed to be charged under section 5.1, 6.1 and 7.1.

(2) The first submission shall be made no later than [October 31, 2017].

(3) The submission for each calendar year starting with 2019 shall be made no later than [120 days] before the start of the year.

(4) If the Board makes recommendations as described in section 5.1, 6.1 or 7.1, the Financial Services Manager shall submit to the Board,

(a) a revised proposed fee that takes into consideration the recommendations of the Board, and in the case of the base fee is consistent with comparison fees**;**

(b) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed fee;

Commented [ESP14]: OPG suggest removing this section.

Commented [ESP15]: OPG propose two-year period to apply for fees post 2020 with the opportunity to amend mid period (but only once in any 12 month period).

(c) in the case of the base fee, details concerning the comparison fees that the Financial Services Manager considered;

(d) in the case of the variable fee, a description of the methodology that the Financial Services Manager has applied to determine forecast interest rates in respect of tranches of the net annual funding obligations; and

(e) in the case of a proposed fee for costs and expenditures by the Financial Services Manager, the rationale for the costs and expenditures having been [prudently incurred, and having been incurred in relation to funding obligations incurred or that are planned to be incurred by financing entities].

Board approval, general

10. (1) The Board may approve a proposed fee submitted by the Financial Services Manager or refuse to approve and refer the proposed fee back to the Financial Services Manager with the Board's recommendations.

Commented [ESP16]: There does not seem to be a requirement on the Board to reach a decision within a certain timeline.

Also what happens if the FSM returns a second time with a revised fee/fee application and the Board is still not satisfied with it?

Commented [ESP17]: OPG suggest removing subsections 10 (1), 10 (2), 10 (3).

[OLC Note: As noted by ENE LSB, there is some redundancy at the moment between section 10 and sections 5.1 and 6.1. This matter will be addressed in a subsequent draft when we have settled the Board approval process for each of the various scenarios (e.g. base fee; variable fee; costs/expenditures fee).]

(2) The Board may specify in its approval that a fee payable in respect of any period beginning on or after July 1, 2017.

(3) For the purpose of determining whether to approve a proposed fee, the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee.

(4) For the purpose of determining whether to approve a proposed fee, the Board may consider advice provided by the Ontario Financing Authority [with respect to comparison fees, annual rates and forecast interest rates].

Commencement

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