1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, "payment obligations as may be prescribed").

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the

FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can’t be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can’t have the transfer of a regulatory asset be subject to the Financing Plan. Also, can’t impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

“Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee.”

I think it is also important to update the definition of “transfer” to catch the latest changes to the definition of “Disposition” in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).