Version 3 [IESO comments]

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 phasing out of coal fired generation, modernizing sites and facilities for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

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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".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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 determined to be derived by the 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; ("French")

"clean energy costs" means, in respect of a reference period, the value of 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 estimated amounts to be paid by the IESO referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]**

a. procurement contracts for:

a. renewable energy generation or capacity,

b. conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. energy efficiency,

d. natural gas generation and capacity, excluding such contracts as may be prescribed, or [**NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. payments made or expected to be made 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"[4] means a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

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

"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 **]; ("French")

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

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

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

"IESO funding shortfall" means the amount determined under section 20xx; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

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

"investment asset 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, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment interest is transferred;

"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 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")

"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the 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 amount recorded in the variance account; ("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, 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")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale thereof, and, in each case, transferred shall have a corresponding meaning; (“French”) **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any “transfer”, the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term “transfer” needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]**

“variance account” means the variance account established under section 20.1xx.

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 the 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 **[other / additional?]** 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 [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts or adjustments as may be prescribed.

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

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 the use of 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.

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 **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some 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 a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

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

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(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.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment; or **[NTD: the clean energy adjustment is allocated and collected rateably]**

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

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

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

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

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** 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; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"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 a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), to more fairly recognize clean energy benefits and allocate the clean energy costs among present and future generations of specified consumers, the rate **[NTD: rate or rates?]** 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 **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for 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 mentioned 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.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or 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 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 unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate 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 **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with the terms of payment specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

(5) The indebtedness mentioned in subsection (4) 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.

Irrevocability of clean energy adjustment

9xx. (1) The amount 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 adjustment and 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.

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 as follows and as may otherwise be prescribed:

1. The Financial Services Manager shall estimate the finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(3) 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,

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

   ii. aggregate variations in billings due to variations in electricity consumption, and

iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to receive

(2) The IESO shall, as an agent of the investment asset owners, receive the clean energy adjustment paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.] [NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].**

Collection account

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

1. Amounts described in subsection 12 (4).

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 asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners. **[NTD: see sections with security interest language.]**

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer in respect of the clean energy adjustment, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(3)Each electricity vendor shall, as an agent of the investment asset owners, collect the clean energy adjustment paid by specified consumers [in accordance with the regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

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 asset owner in accordance with subsection (5), be held in trust for the investment asset owners:

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 shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

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.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager 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.

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 asset owner.

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 electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager 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).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager 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 time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

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

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager 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.

Amendments to the fair allocation calculation

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

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) 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 Minister in writing.

Publication

(7) 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 .

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 with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

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.

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 incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, 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 Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer 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. **[NTD: probably unnecessary]**
[Note: This is meant to assist with clarity in the subsequent provisions.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account

20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same

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

Same

(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

Same

(4) IESO shall record in the variance account all payments received by the IESO resulting from the right of recovery under section 21 or any transfer under section 22.

Recording determinative

(5) Each recording by the IESO in the variance account is determinative as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner

(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance accounts.

Same

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

(3) IESO shall not be entitled to collect all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity. **[NTD: not necessary and unhelpful to refer to the Financing Plan in relation to transfers]**.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

Vesting, deemed Perfection

(3) Each transfer of a regulatory asset shall be deemed to have been and shall be perfected and vested as against IESO and all other persons who have claims of any kind against IESO or the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer or have registered or otherwise perfected their interest.

PART VI
THE INVESTMENT ASSET

Investment asset

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest**.**

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) 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 without duplication:

1. The right to impose, bill, invoice, collect and receive 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 and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that 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 regulatory asset owner's regulatory asset.

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.

No set off, etc.

(2) The investment asset shall not be set off by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset 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 section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset 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 asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset 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 asset 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, 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 asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the 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 asset 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 [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

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.

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 asset 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 asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, 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.

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.

[NTD: the earlier provisions provided that the PPSA does apply]

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 establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding 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.

Non-application, Financial Administration Act, s. 28[7]

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.

Regulations

38xx. 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;

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

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[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* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act, including,

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

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

(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; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

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

a. incurring liabilities in relation to the regulatory asset

b. transferring the regulatory asset for consideration;

c. 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 that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

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

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 in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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 in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[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 [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

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
FINANCE AMOUNT

Finance amount

1. The finance amount for a reference period shall be 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 asset 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 owners under a funding obligation, excluding any payment made by applying the 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, 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 by or on behalf of investment asset 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 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset 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 at the end of 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 asset owners that were incurred or committed to directly or indirectly in connection with 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:

Finance reserve balance

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

1. Calculate the sum of all amounts deposited by or on behalf of investment asset 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 asset owners during the reference period from deposits previously made as described in paragraph 1.

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