Statement of Facts – Fair Hydro Plan Legislation / Regulation

Included in the legislation – Draft April 17, 2017

Item	Meets "operability" criteria (financing)	Meets "accounting" criteria for Control
Legislation needs to address that OPG will be paid management fees (both fixed and variable)	**Yes**-management fees will be part of the regulatory assets and to be recovered in future. Management fees will also be built in Management Agreement between OPG and the Trust	**Yes**
Part IV – Limitation 12(1.1) - The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.	**NO** – not collecting interest before May 1, 2022 will cause financeability issue. Agree with "accounting" assessment, the Legislation must require interest, carrying and administrative costs to be paid to the Trust	**NO** - The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
Part IV – Section 12.(1) – Contents of Financing Plan	Need to know the restrictions in the Plan to decide on financeability	**NO** – Too many restrictions here on what the Financing Plan should have, specifically point *6) such other matters as may be prescribed.* Too open ended. Weakens accounting argument. This section should stick only to principles and parameters.
Regulations 100x The Lieutenant Governor in Council may make regulations, 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.	N/A	**No –** The Province should not have the right to change how OPG will ultimately collect the intangible asset once financing is issued.

Part IV – Section 8.1 – Principles • The allocation of the costs among specified consumers should be <u>proportionate</u> to the benefits of the clean energy initiative to those specified consumers over time. • During a reference period, no specified consumer should bear an unreasonably <u>disproportionate</u> share of the costs.	**NO –** this may create risk on financeability Need to know details on these items to further assess financeability	**MAYBE –** How is the allocation of costs supposed to be measured, what is defined as 'disproportionate'? Need to ensure that this would not impact any regulatory assets that are already being financed and does not impact recoverability.
Part IV – Section 8.2 – Implementation - The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.	**NO –** this restriction will make it not be financeable	**MAYBE** – Is this meant to ensure that it is in line with the 25% reduction and does not impact the recoverability of debt already issued?
Part IV – Section 8.(2) – Amendments to the Plan	**MAYBE**- as long as it does not affect existing debt (similar to accounting assessment)	**MAYBE** – Amendments made by the Minister relating to the Fair Allocation Plan **cannot** impact the recoverability of debt already issued
Part IV – Financial Services Manager to Prepare Financing Plan – Consistency with Fair Allocation Plan - Section 11(1) (2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.	Need details re Fair Allocation Plan to assess it	**MAYBE** – to clarify what is meant by this? This clause cannot impact the recoverability of debt already issued.
Part IV – Termination of Appointment 12.1(1)	**NO** – This could be a financing issue if Province could terminate OPG as the manager, relating to existing bond.	**MAYBE** – This could raise control issues, depending on the circumstances under which OPG could be removed and replaced. It is preferable to bifurcate the roles so that the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward.

Expected to be included in subsequent regulation:

Issue	Expected Operability criterion	Expected Accounting Criterion for Control
Needs to be clear that OPG has the choice in whether to **buy** the Regulatory Asset (not the Province having the option to sell)	To make it financeable, The trust need to have the "right" but not "obligation" to buy the regulatory assets	
Management fees (both fixed and variable) must be payable to OPG as Financial Services Manager of the Trust.	Management fees will be part of the regulatory assets and to be recovered in future. Management fees will also be built in Management Agreement between OPG and the Trust. Possibly subject to OEB "prudency" review	OPG must have the ability to earn variable returns by exercising its authority. • The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks • OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset
OPG should be the sole unitholder of the Trust and make all decisions regarding the operating and financing policies of the Trust. OPG must have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust with no veto right by the Province.	Agree with accounting assessment and Financeability will depend on the level of Province involvement	• OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the Trust. • OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.