

CHANGE OF LAW ~~PROTECTION ASSUMPTION~~ AGREEMENT

1. PROGRAM/BRANCH: Ontario Financing Authority

2. SUMMARY OF REQUEST:

Provide protection and assurance arrangements in respect of debts, obligations, securities or undertakings associated with investment interests acquired by one or more financing entities established by Ontario Power Generation Inc. pursuant to s. 22 of the *Ontario Fair Hydro Plan Act, 2017* ("OPG Financing Entities"), that, under certain circumstances as set out in the ~~Change of Law Assumption Agreement ("assumption agreement")~~, proposed arrangements the Province would pay when due amounts in respect of the obligations of the Financing Entity.

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet: ~~This submission is to request that Treasury Board:~~

- (a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide an ~~an assumption~~protection agreement, to be authorized by Order in Council under the *Ontario Fair Hydro Plan Act, 2017* in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities ~~under substantially reflecting~~ the terms set out in the Appendix Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;
- (b) Recommend to Cabinet an Order in Council, to be made under subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* that authorizes the Minister of Energy Finance and the Minister of Finance Energy, acting together on behalf of the Province,
 - (i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest; ~~and~~
 - (ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

~~specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and~~

~~specify a maximum liability for the guarantee or indemnity.~~

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3. BACKGROUND:

On March 2, 2017, the government announced its proposed Ontario's Fair Hydro Plan (OFHP) to lower electricity bills by 25%, on average, for a typical residential consumer, and holding increases to the rate of inflation for four years. As part of OFHP, it was announced that a portion of the Global Adjustment (GA) would be refinanced in order to fairly allocate costs across present and future generations of electricity consumers with respect to investments made to decarbonize (i.e., phase-out coal) and modernize Ontario's electricity system (i.e., build and maintain a reliable electricity system). —This would be achieved by spreading the cost of electricity investments so that they are shared proportionately by future consumers who cause a need for, or benefit from, the province's multi-billion dollar investments in electricity infrastructure.

To this end, immediate rate relief to eligible ratepayers is provided by deferring and spreading the cost recovery of electricity investments over a longer period of time. Under forecasts provided by the Ministry of Energy at the time of the OFHP announcement in March, the immediate reduction would be about \$2.5 billion per year on average over the first ten years. The Ministry of Energy will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Under the *Ontario Fair Hydro Plan Act, 2017*, (the "OFHPA"), which enables GA Refinancing, the Independent Electricity System Operator (IESO) will have a funding gap resulting from the reduction in amounts collected over four years. The legislation enables IESO to record the under-collection of GA in a variance account, and deems this under-collected amount to be a "Regulatory Asset". The OFHPA provides for the IESO to sell all or a portion of the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the OFHPA, a Financing Entity (i.e., an entity established or caused to be established by OPG as the Financial Services Manager under the OFHPA) will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the ratepayers.

To purchase the regulatory asset from IESO, the Financing Entity must borrow a portion of the funds (planned to be 51%, with other financing to come from OPG and, indirectly, the Province) from the capital markets; however, OPG's financial advisors have indicated that without adequate protection against legislative and judicial risk, the debt would not be financeable. OPG, therefore, has advised that the Government of Ontario provide a change of law ~~assumption~~protection agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would ~~step in and assume~~pay the funding obligations of the Financing Entity.

OFA, the Ministry of Finance and external advisors – consistent with OPG advice – recommend limiting activation of the ~~assumption~~protection agreement to the following circumstances:

- Actions of the Legislative Assembly that undermine the financing arrangement, i.e., repeal or amendment of the OFHPA or new legislation that adversely affects the ability of an ~~the~~ OPG Financing Entity to receive amounts relating to its investment interest so that it can pay its funding obligations;
- A court decision that declares the ability of an OPG Financing Entity to receive amounts on its investment interest so it can pay its funding obligations to be invalid or unenforceable~~A court decision that declares any funding obligations of the Financing Entity to be invalid or unenforceable~~; and
- [Changes to the organization, structure or operations of IESO or a change in the electricity market structure or operations that adversely affects the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations. *Note: this third ~~assumption~~protection event is not included in the current draft of the term sheet agreed to by Ministry of Finance staff; however, OPG is expected to continue to negotiate for its inclusion. It has been included in the TB submission, but may be removed once negotiations are complete, prior to TB/MBC consideration of this item on September 26, 2017.*]

In the event the ~~assumption~~protection agreement is triggered, the Province would be required to pay principal and interest on debt issued by the Financing Entity and other obligations of the Financing Entity as ~~it~~they comes due (without acceleration). The Province may also be required to pay other obligations which may include payments under derivatives agreements and to service providers.

In addition, the Province would also have the option to ~~assume~~directly replace the OPG Financing Entity's with respect to its outstanding rights obligations and liabilities, but if the Province decided to do so additional authority would be required.

The ~~assumption~~protection agreement would continue until all guaranteed obligations of the Financing Entity are fully discharged.

Section 28 of the *Financial Administration Act (FAA), 1990* requires that the Minister of Finance's approval is obtained before a ministry seeks an Order in

Council (OIC) ~~before a ministry to~~ enters into a guarantee or indemnity that would increase the contingent liabilities of Ontario. In this case, the Minister of Finance, together with the Minister of Energy, is recommending the OIC to Cabinet and will, acting together with the Minister of Energy, determine the terms and conditions of and execute the proposed guarantee/indemnity in accordance with the OIC, if approved.

5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

6. RISKS:

If the ~~assumption~~protection agreement is not approved, the Financing Entity would either be unable to raise sufficient financing from capital markets to purchase the regulatory asset from IESO or the cost of the financing will be potentially materially greater than it otherwise would be.

If the ~~assumption~~protection agreement is provided, the Province ~~of Ontario~~ takes on a contingent liability. The amount of the liability would increase over the duration of the OFHP and peak at an estimated \$24B to \$26B of debt (final cost forecasts TBC), including principal and accumulated interest.

In the event the ~~assumption~~protection agreement is triggered, the Province's net debt would be expected to increase by an amount equal to the contingent liability for the debt outstanding at that point in time. The Province's interest payments will also increase by the debt interest servicing of the debt payment obligations it ~~has assumed~~will be required to make under the ~~guarantee~~protection agreement. In addition there may be additional payments on derivatives agreements and for service providers that the Province will be required to make.

While it is difficult to estimate the actual impact to the Province's interest on debt (IOD) expense, the worst case scenario would be the Province assuming the debt at its peak. If so, IOD expense may increase between \$0.8B and \$1.3B per annum (final cost forecasts TBC), depending on the interest rate at which the Financing Entity will be able to borrow at.

It is important to note that, if the ~~assumption~~protection agreement is triggered, and the Province ~~assumes~~becomes responsible for the obligation to service and pay down the debt, that the magnitude of the fiscal impact (IOD expense) will depend on whether or not some portions of the OFHPA continue ~~or not~~, in some form, or not. If the payment streams from ratepayers via the collection of the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if the OFHPA is repealed or is determined by a court not to be constitutional) and not replaced by another authorized charge, the incremental IOD expense would impact the Government's fiscal plan and likely takes away fiscal resources that can be otherwise used. Also, debt incurred to benefit the ratepayer becomes the responsibility of the taxpayer.

7. COMMUNICATION PLAN

Key Messages

- Ontario's Fair Hydro Plan has resulted in the biggest electricity rate reduction in Ontario's history.
- We have heard from Ontarians across the province that the price of electricity has risen too quickly, which is why we moved forward with a plan to ensure the costs are shared more evenly over the years ahead.
- The government is following through on its commitment to balance the books as announced in its 2017 Budget, while continuing to make investments in priority areas such as electricity price relief.

Strategic Approach

- Low-profile, reactive and targeted to industry stakeholders and government employees as necessary. Reactive messaging contingent upon legislative changes only with back-pocket QAs to support as needed.
- Communications support will continue to be led by the Ministry of Energy.

8. RECOMMENDATION

The Ministry of Finance and Ministry of Energy request that Treasury Board/Management Board of Cabinet:

- (a) ~~Approve~~ Authorize that the Minister of Finance and Minister of Energy provide a ~~support~~ protection agreement, to be authorized by Order in Council -under the Ontario Fair Hydro Plan Act, 2017 in respect of the debts, obligations, securities and undertakings of one or more OPG Financing Entities as contemplated under the Ontario Fair Hydro Plan Act, to one or more OPG Financing Entities under-substantially reflecting the terms set out in the Appendix-Provincial Protection and Assurances Indicative Term Sheet and subject to such revisions that the two ministers acting together may determine;
- (b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister of Energy ~~Finance~~ and the Minister of Finance ~~Energy~~, acting together on behalf of the Province,
- (i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest_{7.1} and
- (ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity_{7.1}

~~specify terms and conditions that must be included in any guarantee or indemnity given by the Minister of Energy and the Minister of Finance; and~~

~~specify a maximum liability for the guarantee or indemnity.~~

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APPENDIX

Provincial Protections and Assurances

Indicative Term Sheet

Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the “**Term Sheet**”) relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the “**Act**”) and the regulations made thereunder (the “**Regulation**”). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

<u>Change of Law Protection Agreement:</u>	<u>A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture.</u>
<u>Obligor:</u>	<u>The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.</u>
<u>Indenture Trustee:</u>	<u>An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture.</u>
<u>Beneficiaries:</u>	<u>The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims.</u>
<u>Specified Claims:</u>	<u>Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.</u>
<u>Protection Events:</u>	<u>Any of the following would constitute a Protection Event:</u> <u>(A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof;</u> <u> (2) the Legislature enacts or amends any other statute;</u> <u> (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or</u> <u> (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are</u>

	<u>appointed by the Lieutenant Governor in Council makes or amends any “regulation” (as defined in Part III of the <i>Legislation Act, 2006</i>),</u> <u>in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or</u> <u>(B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is <i>ultra vires</i> in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims.</u>
<u>Obligation to Pay Specified Claims:</u>	<u>Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.</u>
<u>Subrogation:</u>	<u>Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary’s rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor’s prior written consent.</u>

<u>Optional Replacement:</u>	<u>At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement.</u>
<u>Term:</u>	<u>The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding.</u>
<u>Obligor Approval:</u>	<u>The Change of Law Protection Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Protection Agreement applies to such Specified Claim.</u> <u>The Change of Law Protection Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Protection Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims.</u> <u>The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.</u>
<u>FIPPA:</u>	<u>The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the <i>Freedom of Information and Protection of Privacy Act</i> (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law.</u>
<u>Representations and Warranties:</u>	<u>To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.</u>

<u>Confidentiality Obligations:</u>	<u>To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity.</u>
<u>Governing Law:</u>	<u>Province of Ontario.</u>

Updated Draft to be Attached

Change of Law Assumption Agreement

Indicative Term Sheet

Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the “**Term Sheet**”) relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the “**Act**”) and the regulations made thereunder (the “**Regulation**”). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding on the parties.*

<u>Change of Law Assumption Agreement:</u>	A Change of Law Assumption Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture.
<u>Obligor:</u>	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.
<u>Indenture Trustee:</u>	An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture.
<u>Beneficiaries:</u>	The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims.
<u>Specified Claims:</u>	Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval. Specified Claims are expected to include principal and interest on senior debt obligations issued by the Financing Entity [and any other monetary obligations of the Financing Entity that rank ahead

	of or equally in priority of payment with the senior debt obligations of the Financing Entity pursuant to the Trust Indenture].
Assumption Events:	Any of the following would constitute an Assumption Event: (A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof; — (2) the Legislature enacts or amends any other statute; — (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the General Regulation made under the Act or any portion thereof; or — (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any “regulation” (as defined in Part III of the <i>Legislation Act, 2006</i>); — in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims or (b) the Change of Law Assumption Agreement or any of the agreements under which Specified Claims arise without the agreement of the Indenture Trustee; or (B) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act or the Regulation is <i>ultra vires</i> in a way that materially and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims.
Obligation to Assume Specified Claims:	Upon the occurrence of an Assumption Event, the Indenture Trustee will have the right to require the Obligor to pay the amount of Specified Claims on behalf of the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Assumption Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

Subrogation:	Upon paying an amount to a Beneficiary in respect of a Specified Claim, the Obligor shall become entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity and the obligations of the Financing Entity owing under the agreements under which the Specified Claim arises. The Financing Entity may not change or consent to any change in such rights and interests without the Obligor's prior written consent.
Optional Replacement:	At any time following the exercise by the Indenture Trustee of its right to require the Obligor to pay Specified Claims when due and payable, the Obligor shall be entitled (but not obligated) to replace the Financing Entity as obligor and debtor and directly assume all of the Financing Entity's outstanding obligations and liabilities. The Financing Entity (including through the Financial Services Manager) will ensure that any obligation and liabilities undertaken or assumed by it will by their terms permit such a replacement and assumption (or, if applicable, satisfaction and termination) by the Obligor without additional cost or penalty and without any requirement for further consent, approval or agreement.
Term:	The Change of Law Assumption Agreement will continue for as long as any Specified Claim remains outstanding.
Obligor Approval:	The Change of Law Assumption Agreement will become effective in respect of a Specified Claim (including any modification) only after the Obligor has confirmed in writing that the Change of Law Assumption Agreement applies to such Specified Claim. The Change of Law Assumption Agreement will annex the applicable forms of program and series documents under which obligations of the Financing Entity may arise (e.g., including the form of trust indenture and series supplemental indenture) and set out the terms and conditions and process for obtaining the Obligor's approval and confirmation that the Change of Law Assumption Agreement will apply to Specified Claims. Such approval may be made conditional on such matters as may be specified by the Obligor, including a maximum amount applicable to Specified Claims. The Province's approval of the form of any IESO/Financing Entity transfer agreement and any amendments will also be required.

FIPPA:	The Change of Law Assumption Agreement will acknowledge that the Obligor will be bound by the Freedom of Information and Protection of Privacy Act (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Assumption Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law.
Representations and Warranties:	To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.
Confidentiality Obligations:	To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity.
Governing Law:	Province of Ontario.