PROVINCIAL SUPPORT AGREEMENT TO OPG FINANCING ENTITY

1. PROGRAM/BRANCH: Ontario Financing Authority

2. SUMMARY OF REQUEST:

Provide a guarantee or guarantees 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 support agreement, the Province would pay when due amounts in respect of the debt obligations of the Financing Entity.

This submission is to request that Treasury Board:

(a) Authorize that the Minister of Finance and Minister of Energy, on behalf of Ontario, provide a support 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 the terms set out in Appendix;

(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 and the Minister of Finance, 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 and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.

3. BACKGROUND:

Commented [MOF LSB1]: It would be useful to be able to narrow the scope of the guarantee wording. Currently it is not limited to principal and interest on the debt issued by the financing entity but could cover fees of service providers, rating agencies, etc. We should work toward making this clearer and if we could get copies of draft agreements such as the Master Trust Indenture, Supplemental Indenture, draft offering documents, any other agreements that would shed some light on how the debt instruments are issued and their terms and conditions this would be helpful.

Commented [RK2]: Need to confirm direction.

Commented [RK3]: In this case, could it be tied to the requirements of the Act, without a specific maximum, or tied to amount consistent to some determination under the Act, such as the fair allocation amount determination, or cumulative annual fair adjustment amounts under the Act (including financing costs)?

Commented [AS4]: Analysis on maximum liability still underway by energy, working with OPG (Matt).

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. The OFHP includes the deferral of a portion of the Global Adjustment portion of the cost of electricity. The deferral is built around the principle that the costs incurred to put in place assets for generation and support conservation to move to a clean, reliable system, would last longer than their typical 20-year contract period and would be able to provide benefits for future ratepayers, and that the costs should be spread more fairly between current and future rates.

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. This estimate is being updated and will be presented to [TB/MBC/Cabinet] as part of a report-back by the Ministry of Energy.

Under the *Ontario Fair Hydro Plan Act, 2017,* (the Act), which came into effect on June 1, 2017, the IESO is able to establish a variance account to record the deferral amounts arising from the difference between collections from current ratepayers and payment obligations to generators and conservation, and to create a regulatory asset to recover the balance in the variance account. The Act provides for the IESO to sell the regulatory asset; i.e., the right to recover those deferred amounts from specified consumers in the future. Under the Act, Ontario Power Generation Inc. as the Financial Services Manager under section 18, is authorized under section 22 to establish one or more financing entities that may incur funding obligations. Such a Financing Entity will purchase the regulatory asset, effectively financing the shortfall in current rates not received from the eligible ratepayers.

Commented [MOF LSB5]: Might be helpful to include more information about OPG developing the Financing Plan, what funding obligations are, etc.

Commented [RK6]: I'd see if Energy can share its description on this.

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, judicial and organizational risk, the debt would not be financeable. OPG is, therefore, requesting that the Government of Ontario provide a support agreement to the Financing Entity and prospective debt holders such that, under certain circumstances, the Province would step in and assume the funding obligations of the Financing Entity.

Certain events that would negatively impact holders of Fair Hydro Plan debt would activate the Provincial Support Agreement:

- Decisions by the Legislative Assembly, i.e., repeal of the Ontario Fair

Hydro Plan Act, 2017, or amendments or new legislation that adversely affect the Financing Entity;

- 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 adversely impacting the Financing Entity.

In the event the support agreement is triggered, the Province would take over the obligations of the Financing Entity including principal and interest payments on debt issued to date and any outstanding payments to service providers.

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

Commented [MOF LSB7]: Not sure it is correct that Province will "take over the obligations" – isn't the Province just going to pay as they come due? Also again note outstanding payments to service providers (whoever they might be) is broader than payments on the financing entities debt.

5. ADMINISTRATIVE IMPACTS:

To be managed by existing staff.

6. RISKS:

If the support 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 support agreement is provided the Province of Ontario takes on a contingent liability. The amount of the liability would increase over the duration of the Fair Hydro Plan and peak at an estimated [$24B to $26B (to be revised as Energy re-estimates)] of debt principal, along with associated interest payments.

In the event the support 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 under the guarantee.

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, depending on the interest rate at which the Financing entity will be able to borrow at.

Commented [MOF LSB8]: OPCD to review

Commented [MOF LSB9]: In general, this TB submission needs more information on:
-The amount of debt that will be issued and over what time period.
-The maximum amount that the Province will guarantee.
-Where the debt will be issued
-In order to describe the risk

Commented [RK10]: Could include Energy's curve from the March 2nd CabSub, as well as the interim update in the more recent LTEP deck--- but would be subject to updates per Energy's anticipated forthcoming submissions cited above.

It is important to note that, if the support agreement is triggered, and the Province assumes 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 Act continue or not, in some form. If the payment streams from ratepayers in the Clean Energy Adjustment (CEA) continue, this would offset the debt and interest payments; however, if the CEA is ended (e.g., if 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.

Commented [MOF LSB11]: Include of a discussion of the risk associated with the trigger events – what are the risks – are there legal risks regarding the legislation and whether a court might find it to be invalid for some reason – have legal opinions been obtained on this? Are some of these risks within the control of the government so can be mitigated in some way?

Commented [RK12]: We should get input from Energy on this, to be consistent with what is, or will be, in Energy submissions.

7. RECOMMENDATION

(a) Approve that the Minister of Finance and Minister of Energy provide a support agreement, as contemplated under the *Ontario Fair Hydro Plan Act*, to one or more OPG Financing Entities under the terms set out in Appendix;

Commented [MOF LSB13]: It may be the case that this is a more general approval and the 2 Ministers will determine the terms and condition in accordance with the authorization given to them by the OIC. It depends on how soon the actual wording of the guarantee can be confirmed as opposed to the draft term sheet – The province should not sign of commit to the term sheet as the province's authority comes from the OIC.

(b) Recommend that Cabinet approve an Order in Council, in accordance with section 5 of the Ontario Fair Hydro Act, that authorizes the Minister and the Minister of Finance, 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 and the Minister of Finance; and

specify a maximum liability for the guarantee or indemnity.

(c) Note that the ministry of Energy will also be submitting to the Minister of Finance a request for approval, under Section 28 of the Financial Administration Act, contingent liabilities arising from the provision of the support agreement.

APPENDIX

[Insert Final Term Sheet]