December 15, 2017

ONTARIO POWER GENERATION

CONSOLIDATION CONSIDERATIONS OF THE FAIR HYDRO TRUST UNDER US GAAP

Purpose:

The purpose of this memorandum is to summarize Ontario Power Generation's (OPG) views on its ability to consolidate the Fair Hydro Trust (Trust) which is a financing entity contemplated by the *Ontario Fair Hydro Act, 2017* (the Act) under United States generally accepted accounting principles (US GAAP).

Background and Transactional Highlights:

On March 2, 2017, the Province of Ontario (the Province) announced the Ontario Fair Hydro Plan (the Fair Hydro Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Fair Hydro Plan, a portion of the Global Adjustment costs will be refinanced over a longer period for Regulated Price Plan (e.g., residential, farm, small businesses) and other eligible consumers (FHP Program). Under the Act, OPG is appointed as the Financial Services Manager (FSM) and is given the authority to, among other things, establish and manage one or more financing entities to raise debt financing (referred to as "funding obligations") for the purposes of the Act.

The following outlines key transactional details relating to the FHP Program:

- Pursuant to the Act, the Independent Electricity System Operator (IESO) will determine the shortfall resulting from the rate reduction on a monthly basis and record the amount in a variance account. The Act refers to this shortfall balance as a Regulatory Asset.
- The IESO may offer for sale a specified portion of the Regulatory Asset to the Trust pursuant to a Master Transfer and Servicing Agreement (MTSA) in return for cash proceeds.
- Upon the sale of a specified portion of the Regulatory Asset to the Trust, the Trust acquires a GA deferral asset, designated as an "investment asset" under the Act, which is a right to collect, among other things, future cash flow streams representing:
    - principal repayments on the related debt tranche issued;
    - interest on the related debt tranche issued;
    - reimbursable costs and expenditures paid or payable during the period, including those incurred by OPG as FSM on behalf of the Trust as stipulated in sections 10.2(3) and 10.13(3) of *Ontario Regulation 206/17 General* (General Regulation); and
    - OPG's fees as FSM paid or payable during the period which is comprised of both base and variable components, the calculations for which are stipulated in the General Regulation.
- GA deferral asset owners have a right to collect carrying costs (interest on debt and other expenses but not principal) from the IESO up to July 31, 2021 and all amounts due (including principal) from specified consumers through clean energy adjustments (CEAs) from May 1, 2021 onward. CEAs represent the carrying costs of the Trust (which is the sum of: interests, derivative payments, reserve account deposits, costs and expenditures for the period, and tax liabilities less the sum of: reserve account withdrawals, payments from derivative agreements, and tax refunds) plus principal repayments and true up amounts. CEA payments will continue until all debt issued by the Trust is repaid.

- Section 25(3) of the Act stipulates that the IESO cannot collect the balance recorded in the variance account from specified consumers before May 1, 2021 (moratorium period). Note that the collection by the IESO of the amounts in the variance account from specified consumers is not through CEAs, but through a separate mechanism to adjust rates charged to specified consumers. CEAs are for the benefit of GA deferral asset owners, and are collected by the IESO from electricity vendors on behalf of the Trust (refer to sections 13(1) and 16(1) of the Act, which stipulate that the Electricity Vendors and the IESO, respectively, are collecting the CEAs as agent for GA deferral asset owners).
- During the period from December 1, 2017 to July 31, 2021, the IESO will pay for the carrying costs of the Trust pursuant to section 9.1 (1) of the General Regulation. These costs then are added to the variance account for the IESO deferral (per section 16, paragraph 3 of the General Regulation), which specified consumers have the ultimate obligation to bear.
- In order for the Trust to fulfil its business purpose of financing the GA deferral, it has to raise debt. The debt is expected to be obtained through the following sources, with Tranche A comprising not less than 51% of the total funding:

Table 1 – Type and Source of Fair Hydro Trust Debt Funding

Tranche and Debt Type	Source of Funding	% of Total Funding Requirement
Tranche A Senior Debt	Capital Markets (privately-placed debt)	51%
Tranche B Subordinated Debt	OPG via Province (equity injections)	39%
Tranche C Junior Subordinated Debt	OPG via Province (equity injections)	5%
	OPG via Capital Markets (Medium-term note program – public debt)	5%

- The Province's equity contributions will be used solely for OPG's subordinated debt investment in Tranche B and Tranche C.
- The General Regulation was amended in November 2017 to stipulate, among other things, OPG's fees as FSM as follows:
  - Fees for 2017: For 2017, OPG will receive $3.1 million and an amount to cover up-front costs incurred between June 1 and December 31, 2017 by OPG on behalf of the Trust (e.g. legal fees, rating agency fees, trustee fees). The $3.1 million includes a $600,000 fee and $2.5 million to cover costs incurred prior to June 1, 2017. The expenses between June 1 and December 31, 2017 will also include direct costs of OPG employees who are dedicated exclusively to Fair Hydro matters. OPG will also provide a specified procedures report from external auditors to the OEB regarding the expenses.
  - Fees for 2018-19: For January 2018 to March 2019, OPG will receive (i) a monthly base fee equal to 7.5 basis points, divided by 12, multiplied by the average monthly outstanding debt of the Trust, (ii) a variable fee that is calculated based on how the interest rate for external funding tranches for that period compare to forecast interest rates for the period (and which fee is limited to ± 2% of 5% of the total senior debt issuances in the period), and (iii) third-party expenses and direct employee costs of dedicated Fair Hydro employees.
  - Fees for 2019-20 and Fees for subsequent years. For April 2019 to March 2020, and every 12-month period thereafter, OPG will make submissions to the OEB on the base fee, variable fee

and expenses. The base fee will be based on comparable fees charged by full-service managers of securitization vehicles (and other similar funds). The variable fee will be calculated in the same manner noted above, but with a refresh of forecast interest rates for the relevant period. For 2019 onward, the expenses will include direct employee costs of dedicated Fair Hydro employees only if the fees of comparable managers also include such direct costs.

Status of Program Agreements [MONITOR]

As of the date of this memorandum, the program documents/agreements reference herein have not been executed. The versions or dates of the documents are as follows:

- Master Transfer and Servicing Agreement – December 14, 2017 (latest version submitted to credit rating agencies)
- Management Agreement – December 14, 2017 (latest version submitted to credit rating agencies)
- Master Trust Indenture – December 14, 2017 (latest version submitted to credit rating agencies)
- Financing Plan – December 1, 2017 (last version submitted to the Province)
- Subordinated Debt Pricing Protocol – December 11, 2017
- Change of Law Protection Agreement – December 14, 2017 (latest version submitted to credit rating agencies)
- Change of Law Process Agreement - December 14, 2017 (latest version submitted to credit rating agencies)

Accounting Assumptions and Resolutions:

1. The Regulation must require interest, carrying and administrative costs to be paid to the Trust in cash on a monthly basis, so that the Trust is able to recognize appropriate cash flows to offset any ongoing costs.
   - **Accomplished** – During the period from December 1, 2017 to July 31, 2021, the IESO has a regulatory obligation to pay for the carrying costs of the Trust pursuant to section 9.1 (1) of Ontario Regulation 206/17 General (General Regulation). Specified consumers are obligated to pay CEAs after May 1, 2021 pursuant to the Act. Note that the IESO's obligation to pay the carrying costs of the Trust is made on behalf of the specified consumers, as the carrying costs of the Trust paid by the IESO are added directly to the variance account which forms the regulatory asset.
2. The regulations and various program agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the FSM of the Trust. The variable management fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.
   - **Accomplished** – OPG's fees as FSM include both base and variable fee components. The variable fee compensates OPG for its at-risk performance for ongoing issuances of senior external debt tranches and satisfies this criterion. The General Regulation stipulates that the variable fee will be calculated based on how the interest rate for external funding tranches for that period compare to forecast interest rates for the period and which fee is limited to ± 2% of 5% of the external funding tranches in the period.
3. The Minister of Energy (MOE) will have the ability to replace the FSM if there is a failure to perform. There will be a bifurcation of roles where 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. The ability for the MOE to remove OPG as the FSM should not impact the recoverability of existing investment assets.

- **Accomplished**. Section 18 of the Act stipulates that the MOE can appoint a different FSM if OPG is "*unable or unwilling to do so*". Management considers that the failure to perform standard would fall under the "unable to" criterion specified by the section. Further, section 5(3)(a)(i) of the Act provides the mechanism to authorize the Minister of Finance to agree to "*guarantee any debts, obligations, securities or undertakings associated with an investment interest*...". This provision allows for the limited guarantee on the recoverability of the GA deferral assets that have already been issued to the extent covered by the Change of Law Protection Agreement.

4. The calculation of the Fair Allocation Amount (FAA) will be performed by the Minister of Energy as noted in *Section 15 - Fair Allocation Amount* of the Act and further details in *Section 14 – Fair Allocation Amount* of the General Regulation. This does not impact the relevant activities of the Trust.
   - **Accomplished** – OPG received the FAA from the MOE at the end of September 2017.
5. OPG has the ability to appoint and remove the Trustees and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust.
   - **Accomplished –** OPG appointed BNY Trust Company of Canada as the Indenture Trustee and Computershare Trust Company of Canada as the Issuer Trustee. Under 6.2 of the Declaration of Trust, the unitholders of the Trust can remove the Issuer Trustee by majority vote. FHP2017 Inc. is a wholly-owned subsidiary of OPG and owns 99.9999% of the units in the Trust, therefore, OPG will have the ability to remove the Issuer Trustee. The Indenture Trustee may only be removed by the bondholders whom it represents. This is a typical commercial arrangement and management concludes that there are no issues presented.
   - Section 8.10 of the MTI outlines that OPG as Manager (under the Management Agreement) and the IESO as Servicer (under the MTSA) may be terminated by the Indenture Trustee upon the occurrence and during the continuance of an Event of Default (defined in the MTI under section 8.01). Management believes that this ability of the Indenture Trustee is a form of a protective right and represents reasonable and commercial terms given they are acting on behalf of the specified creditors. Management also notes that this ability is only under limited circumstances where OPG as Manager or Servicer is not performing its duties and obligations at the appropriate level. Therefore, the presence of this provision does not provide the Indenture Trustee a controlling financial interest over the Trust.
6. Neither the Ontario Energy Board (OEB) nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error.
   - **Accomplished** – The final terms of the OEB's role in reviewing and approving OPG's fees as FSM in the General Regulation set outs market-based parameters that the OEB must adhere to when reviewing OPG's submission for its fees. Management concludes that the OEB's review role is perfunctory in nature and does not permit for any subjective discretional reduction in OPG's fees as FSM. In addition, the OEB's typical application of a broad prudency test on rate regulated entities' rates in the Ontario electricity market do not apply to their review of OPG's fees as FSM.
7. The margin on the interest rates associated with Tranche B and Tranche C, which will be recovered from specified consumers, will be reflective of the risk profile of the debt and the associated market terms.
   - **Accomplished** – The Financing Plan (which is a requisite document that OPG must prepare and deliver to the MOE for the FHP Program) outlines risk-appropriate spreads for subordination. The final rates (and therefore spreads) will be determined when the first tranche of debt is acquired to purchase investment assets. The credit range for each debt tranche will be determined by the overall credit strength of the financing structure and its resilience under various credit stress scenarios (i.e. the subordinated debt will be priced accordingly in relation to the senior debt using standard market pricing practices). The concept of subordination of OPG's investment in the Trust will be documented in the Protocol Agreement between OPG and the Province.

8. The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification* of the Legislation will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a protection event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an investment asset in order to pay the obligations of the Trust.
   - **Accomplished** – The Change of Law Protection Agreement between the Trust, the Indenture Trustee, Issuer Trustee and the Province was executed in **[**December**]** 2017. **[MONITOR]**
9. The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.
   - **Accomplished** – see discussion under point 6 above. The final terms of the OEB's role stipulated in the General Regulation with respect to their review and approval of OPG's fees as FSM is limited to market-based parameters, which is a more favourable outcome than if they can exercise prudency tests. Specifically, the OEB, in its review of OPG's proposed fees for the upcoming term, is limited to an objective basis using market comparable data as the basis for their opinion, whereas a prudency test can incorporate subjectivity in the process. In addition, if the OEB does not approve a proposed fee, the General Regulation stipulates that they may make recommendations on what rate they found materially inconsistent and OPG can revise the proposal and re-submit.
10. In the event that a different Financial Services Manager is appointed by the Minister of Energy, the IESO is required to continue to make cash payments for interest to the Trust for the existing debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.
   - **Accomplished** – the November 2017 amendment to the General Regulation added section 9.1(1) stipulating the that IESO "*shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021.*". This provision gives the IESO the legislative obligation to pay carrying costs (which includes interest costs) of any financing entity (not OPG as FSM) during the moratorium period and a two months after to account for collection lag. After the moratorium, section 16(4) of the Act stipulates that the IESO is to remit amounts it receives in respect of CEAs (which includes interest costs) to owners of the GA deferral asset purchased from the IESO. The CEAs will include a portion relating to principal repayments, and will be payable by specified consumers after May 1, 2021.
11. All other items as indicated in *Appendix A.*

Key Considerations:

1. **Which consolidation model should be utilized under US GAAP for the Trust?**
2. **Should OPG consolidate the Trust?**
3. **How should the Trust be presented and disclosed in OPG's consolidated financial statements?**

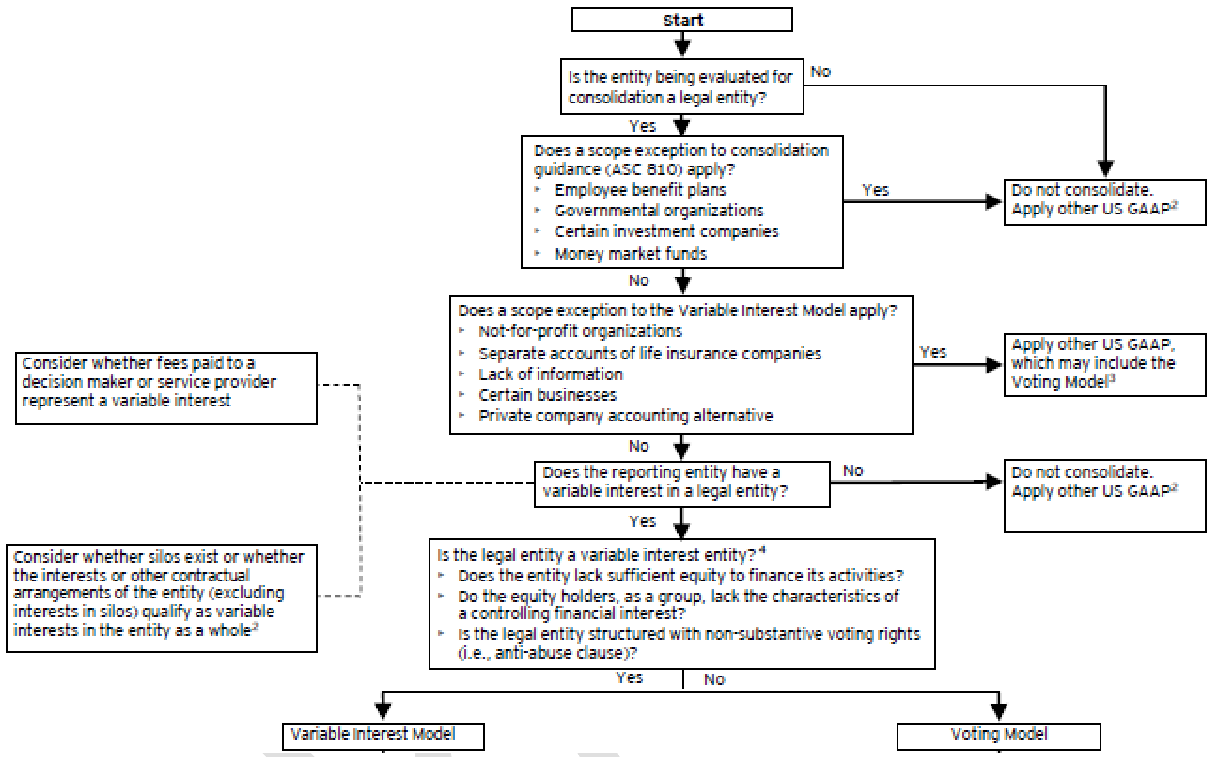
1. Which consolidation model should be utilized under US GAAP?

ASC 810 Consolidation (ASC 810) sets out two models under US GAAP for determining whether consolidation is appropriate:

- The Variable Interest Model

- The Voting Model

Management employed the framework below to determine which of the above models should be used to determine if OPG should consolidate the Trust:



Source: Financial Reporting Developments: Consolidation, September 2016, Ernst & Young LLP

a) Is the Trust that is being evaluated for consolidation a legal entity?

ASC 810-10-20 defines a legal entity as follows:

Any legal structure used to conduct activities or to hold assets. Some examples of such structures are corporations, partnerships, limited liability companies, grantor trusts, and other trusts.

In **[**December**]** 2017, OPG as FSM, appointed Computershare Trust Company of Canada to act as the third party issuer trustee (Issuer Trustee). Following its appointment, the Fair Hydro Trust (the Trust) was established as a financing entity contemplated in the Act through a declaration of trust. The Issuer Trustee is empowered under the declaration of trust to appoint, employ or contract with any person for the transaction of the Trust's activities. Under the Management Agreement between the Trust and OPG, the Trust appointed OPG as its agent to provide services and perform duties for the Trust in planning, implementing and administering the debt financing for the FHP Program, including the acquisition of the GA deferral asset.

Conclusion: Given the activities the Trust is expected to undertake and the GA deferral asset it is expected to hold, the Trust meets the definition of a legal entity.

b) Does the Trust meet a scope exception to *ASC 810 Consolidation*?

The following excerpt from *ASC 810-10-15-12* details the scope exceptions to this Standard:

The guidance in this Topic does not apply in any of the following circumstances:

a) *An employer shall not consolidate an* ***employee benefit plan*** *subject to the provisions of Topic 712 or 715.*

b) *Subparagraph superseded by Accounting Standards Update No. 2009-16*

c) *Subparagraph superseded by Accounting Standards Update No. 2009-16*

d) *Except as discussed in paragraph 946-810-45-3,* ***an investment company*** *within the scope of Topic 946 shall not consolidate an investee that is not an investment company.*

e) *A reporting entity shall not consolidate* ***a governmental organization*** *and shall not consolidate a financing entity established by a governmental organization unless the financing entity meets both of the following conditions:*

   1. *Is not a governmental organization*
   2. *Is used by the business entity in a manner similar to a VIE in an effort to circumvent the provisions of the Variable Interest Entities Subsections.*

f) *A reporting entity shall not consolidate a legal entity that is required to comply with or operate in accordance with requirements that are similar to those included in Rule 2a-7 of the Investment Company Act of 1940 for* ***registered money market funds****…*

Conclusion: None of the exceptions detailed above applies to the Trust, as it is not an employee benefit plan, an investment company, a governmental organization or a registered money market fund. Therefore, the Trust remains within the scope of *ASC 810*.

c) Does the Trust meet a scope exception to the Variable Interest Model?

Pursuant to the excerpt below from *ASC 810-10-15-3*, OPG is first required to evaluate its interest in the Trust under the Variable Interest Model prior to considering any other guidance.

All reporting entities shall apply the guidance in the Consolidation Topic to determine whether and how to consolidate another entity and apply the applicable Subsection as follows:

> *a. If the reporting entity has an interest in an entity, it must determine whether that entity is within the scope of the Variable Interest Entities Subsections in accordance with paragraph 810-10-15-14. If that entity is within the scope of the Variable Interest Entities Subsections, the reporting entity should first apply the guidance in those Subsections. Paragraph 810-10-15-17 provides specific exceptions to applying the guidance in the Variable Interest Entities Subsections.*

Based on *ASC 810-10-15-17* and *ASC 810-10-15-17A* to *17C*, there are five scope exceptions to the Variable Interest Model:

- Not-for-profit organizations **– see below**
- Separate accounts of life insurance companies – **not applicable**
- A reporting entity's lack of information as it relates to an entity that was created before December 31, 2003 – **not applicable**
- Entities classified as being businesses **– see below**
- A private company accounting alternative – **not applicable**

The Trust is not a not-for-profit organization, a separate account of a life insurance company or accounted for under a private company accounting alternative. The Trust was created after December 31, 2003, rendering this criterion not applicable either. Management evaluated whether the Trust would meet the definition of a 'not-for-profit organization' and/or a 'business', as indicated above, and thereby be out of scope of the Variable Interest Model.

Not-for-Profit analysis

ASC 810-10-20 defines a not-for-profit entity as:

An entity that possesses the following characteristics, in varying degrees, that distinguish it from a business entity:

a. Contributions of significant amounts of resource providers who do not expect commensurate or proportionate pecuniary return

b. Operating purposes other than to provide goods or services at a profit

c. Absence of ownership interests like those of business entities

Entities that clearly fall outside this definition include the following:

1. All investor-owned entities

2. Entities that provide dividends, lower costs, or other economic benefits directly and proportionately to their owners, members, or participants, such as mutual insurance entities, credit unions, farm and rural electric cooperatives, and employee benefit plans.

Conclusion: Although the Trust is intended to be revenue neutral (i.e. most of the monies it receives are flowthroughs to OPG), it does not meet the above definition of a not-for-profit entity as:

- It provides a service to the IESO in the form of funding
- There is no absence of ownership interests in the Trust; OPG holds majority ownership
- The Trust provides a return to OPG in the latter's role as Financial Services manager

Business entity analysis

Excerpt from *ASC 810-10-15-17*:

The following exceptions to the Variable Interest Entities Subsections apply to all legal entities in addition to the exceptions listed in paragraph 810-10-15-12...

*…d. A legal entity that is deemed to be a business need not be evaluated by a reporting entity to determine if the legal entity is a VIE under the requirements of the Variable Interest Entities Subsections unless **any** of the following conditions exist (however, for legal entities that are excluded by this provision, other generally accepted accounting principles [GAAP] should be applied):*

1. The reporting entity, its related parties (all parties identified in paragraph 810-10-25-43, except for de facto agents under paragraph 810-10-25-43(d)(1)), or both participated significantly in the design or redesign of the legal entity. However, this condition does not apply if the legal entity is an operating joint venture under joint control of the reporting entity and one or more independent parties or a franchisee.

   Met. OPG, as the reporting entity has participated significantly in the design of the Trust through extensive involvement in the drafting of the Act, regulations, Master Trust Indenture (MTI) and other program documents.

2. The legal entity is designed so that substantially all of its activities either involve or are conducted on behalf of the reporting entity and its related parties.

   Met. The Trust is designed so that substantially all of its activities involve the reporting entity's related parties. For example, the Trust's primary activity involves the IESO, which will sell the GA deferral asset to the Trust.

3. The reporting entity and its related parties provide more than half of the total of the equity, subordinated debt, and other forms of subordinated financial support to the legal entity based on an analysis of the fair values of the interests in the legal entity.

Not met. The Trust will be 100% debt financed and 51% of the debt that is financing the Trust is being obtained through external capital markets, rather than through OPG or any of its related parties.

4. *The activities of the legal entity are primarily related to securitizations or other forms of asset-backed financings or single-lessee leasing arrangements.*

   Met. The primary activity of the Trust is related to securitizing receivables from future Ontario specified consumers i.e. the debt that is expected to finance the Trust will be backed by the 'right to collect' asset. Refer below for further discussion.

Conclusion: As the Trust has met three of the four criteria – while the guidance only requires one of the above criteria – management concludes that it remains within the scope of the Variable Interest Entity model and per *ASC 810-10-15-3* above, OPG must evaluate it within this model first.

d) Does OPG have a variable interest in the Trust?

The following excerpt from *ASC 810-10-20* defines variable interests as follows:

The investments or other interests that will absorb portions of a variable interest entity's (VIE's) expected losses or receive portions of the entity's expected residual returns are called variable interests. Variable interests in a VIE are contractual, ownership, or other pecuniary interests in a VIE that change with changes in the fair value of the VIE's net assets exclusive of variable interests.

The Trust will be 100 percent debt financed, and the contemplated source of funding is summarized in Table 1. In particular:

- The Trust will issue senior debt in the capital markets to finance 51% of the total funding requirement related to the deferred GA cost (Tranche A).
- Through periodic equity injections in OPG, the Province is expected to provide 44% of the total funding requirement throughout the duration of the FHP Program. OPG will invest the proceeds from the equity injections into the Trust, with 39% in Tranche B as subordinated debt and 5% in Tranche C as junior subordinated debt.
- OPG will invest the remaining 5% of the total funding requirement in Tranche C as junior subordinated debt, using internally generated funds or proceeds raised from debt issuances from the public markets.

The first step to determine whether OPG has a variable interest in the Trust is to ascertain the expected variability (i.e. the expected losses or expected residual rights) the Trust was designed to create, which the variable interest should absorb.

ASC 810-10-25-22 outlines the below overarching guidance on determining the variability an entity was designed to create:

The variability to be considered in applying the Variable Interest Entities Subsections shall be based on an analysis of the design of the legal entity as outlined in the following steps:

Step 1: *Analyze the nature of the risks in the legal entity (see paragraphs 810-10-25-24 through 25-25).*

Step 2: *Determine the purpose(s) for which the legal entity was created and determine the variability (created by the risks identified in Step 1) the legal entity is designed to create and pass along to its interest holders (see paragraphs 810-10-25-26 through 25-36).*

Step 1: Analyze the nature of the risks in the Trust	
Guidance	**Analysis**

Step 1: Analyze the nature of the risks in the Trust	
<u>*ASC 810-10-25-24:*</u> *The risks to be considered in Step 1 that cause variability include, but are not limited to, the following:* *a. Credit risk* *b. Interest rate risk (including prepayment risk)* *c. Foreign currency exchange risk* *d. Commodity price risk* *e. Equity price risk* *f. Operations risk*	As a result of the nature of the GA deferral asset the Trust will hold, **credit risk** is applicable. The FHP Program is expected to run until 2047, a 30-year time period that creates uncertainty about the future collection of OPG's amount at risk invested in Tranche C. OPG's 5% and a portion of the Province's investment are junior subordinated debt and its priority of payment rank very low in the Trust's payment waterfall.
Assessment: Given the nature of the primary asset, the Trust is expected to hold (i.e. GA deferral asset), the risk that gives rise to potential variability is credit risk.	

Step 2: The purpose(s) for which the Trust was created and the variability the Trust is designed to create and pass along to its interest holders	
Guidance	**Analysis**
<u>*ASC 810-10-25-25*</u>*:* *In determining the purpose for which the legal entity was created and the variability the legal entity was designed to create and pass along to its interest holders in Step 2, all relevant facts and circumstances shall be considered, including, but not limited to, the following factors:* *a. The activities of the legal entity* *b. The terms of the contracts the legal entity has entered into* *c. The nature of the legal entity's interests issued* *d. How the legal entity's interests were negotiated with or marketed to potential investors* *e. Which parties participated significantly in the design or redesign of the legal entity*	<u>**Activities:**</u> • Prepare a written Financing Plan and deliver to the MOE and it is to be used by OPG as FSM to evaluate whether funding obligations should be incurred by the Trust. • Raising debt, paying bond debt holders, and determining the capacity of the Trust to raise additional financing • Determining the CEAs for a particular reference period • Evaluating and making decisions on financing alternatives, duration, and the strategy to minimize financing costs • Making capital and funding decisions in a manner consistent with the Financing Plan • Ongoing day-to-day management and administration of the program, including fulfilling various reporting requirements to stakeholders <u>**Terms of the contracts the Trust has entered into:**</u> • The Management Agreement between the Issuer Trustee and OPG delegates to OPG all powers and duties of managing the Trust. • The MTSA between the Trust and the IESO provides for the periodic transfer by the IESO to the Trust of specified portions of the GA deferral asset. It also outlines the IESO's servicing duties in relation to the Regulatory Asset.

Step 2: The purpose(s) for which the Trust was created and the variability the Trust is designed to create and pass along to its interest holders	
	• The Master Trust Indenture between the Issuer Trustee on behalf of the Trust and the Indenture Trustee provides the terms for incurrence of debt, outlines the conditions precedent before any debt is issued, and allows for the tiered-debt structure (i.e. senior, subordinated and junior subordinated), outlines the priority of payment (i.e. waterfall). Debt issuances will be governed by the Master Trust Indenture and the supplemental indentures that relate to the specific debt issuances. OPG's 5% and a portion of the Province's investment are junior subordinated debt and its priority of payment rank very low in the Trust's payment waterfall. Refer to further discussion below under "Variability in the Trust". • The Change of Law Protection Agreement between the Province and the beneficiaries (Indenture Trustee on behalf of creditors) provides bondholders a guarantee in the event of a protection event and acts as a credit enhancement for the Trust's senior debt. The guarantee will be triggered if the Province changes the Fair Hydro legislation/regulations or passes other legislation/regulation that materially adversely affects the ability of the Trust to service interest or principal payments on its debt, or the Act is declared invalid/unconstitutional. • The Change of Law Process Agreement between OPG and the Province outlines the process for deliverables under the FHP Program, the requirement to deliver a process certificate, and the process in determining the envelope for what is guaranteed. **<u>How the Trust's interests were marketed to potential investors:</u>** The Financing Plan contemplates privately-placed debt in the Canadian or potentially, US markets. The related Offering Memorandum the Trust will deliver in connection with the first debt issuance specifies that the net proceeds will be used to (i) acquire the GA deferral asset pursuant to the MTSA, (ii) refinance indebtedness of the Trust (iii) pay Offering and related costs of the Issuer and (iv) fund specific reserve accounts. **<u>The nature of the Trust's interests issued:</u>** Refer to Table 1 for the financing structure of the Trust including source and debt type. OPG's interests in the Trust will be junior subordinated (in Tranche B and C). **<u>Parties that participated in the design of the Trust</u>** While it is explicitly addressed in the Legislation tabled, OPG continues to actively participate in the detailed design of the

Step 2: The purpose(s) for which the Trust was created and the variability the Trust is designed to create and pass along to its interest holders	
	Trust, including outstanding regulations and program agreements.
Assessment: The purpose of the Trust is to allow OPG to participate in the Fair Hydro Plan and earn a return for its role as FSM through effectively managing the FHP Program. OPG is expected to earn a) management fee revenue and b) interest income on the subordinated debt issued to the Trust (via MOE equity injections). The variability the Trust is designed to create and pass along to interest holders is analyzed below.	

<u>Variability in the Trust</u>

To identify the variability, the Trust is designed to create and pass along to its interest holders, management also considered the below guidance

Excerpt from *<u>ASC 810-10-25-31</u>:*

An analysis of the nature of the legal entity's interests issued shall include consideration as to whether the terms of those interests, regardless of their legal form or accounting designation, transfer all or a portion of the risk or return (or both) of certain assets or operations of the legal entity to holders of those interests. The variability that is transferred to those interest holders strongly indicates a variability that the legal entity is designed to create and pass along to its interest holders.

OPG's interest in the Trust is subordinated to the senior debt (Tranche A) and subordinated debt (Tranche B). It is expected that through its ownership of the most subordinated debt in Tranche C, OPG will be able to capture and retain the spread between the cost of OPG's 5% at-risk investment and the higher interest rate that it will charge to the Trust. The targeted return of the subordinated debt is to be reflective of the underlying risks and should compensate OPG for managing such risks. The mechanism for determining the interest rates for OPG's investment in the Trust will be documented in the Protocol Agreement between OPG and the Province.

Excerpt from *<u>ASC 810-10-25-32</u>*:

For legal entities that issue both senior interests and subordinated interests, the determination of which variability shall be considered often will be affected by whether the subordination (that is, the priority on claims to the legal entity's cash flows) is substantive. The subordinated interest(s) (as discussed in paragraph 810-10-55-23) generally will absorb expected losses prior to the senior interest(s). As a consequence, the senior interest generally has a higher credit rating and lower interest rate compared with the subordinated interest. The amount of a subordinated interest in relation to the overall expected losses and residual returns of the legal entity often is the primary factor in determining whether such subordination is substantive. The variability that is absorbed by an interest that is substantively subordinated strongly indicates a particular variability that the legal entity was designed to create and pass along to its interest holders.

Table 2 below is an indicative pricing table from the Financing Plan related to the expected structure of the FHP Program. It shows that OPG has subordinated interests in the Trust and shows the relative pricing and potential credit rating of each debt tranche.

<u>Table 2: Indicative Pricing by Debt Tranche</u>

Tranche and Debt Type	Risk Profile	Source	% of Total Funding Requirement	Rating Category Estimate	Current Pricing	Potential Rating Range	Price Based on Rating Range

Tranche A Senior Debt	Lowest Risk	Capital Market	51%	AAA	3.25%	AAA – AA	3.25% – 3.75%
Tranche B Subordinated Debt	Medium Risk	OPG via Province	39%	A	4.5%	AA – A	4.0% – 4.5%
Tranche C Junior Subordinated Debt	Highest Risk	OPG via Province	5%	BBB	5.5%	A – BBB	5.0% – 5.75%
		OPG via Capital Markets	5%				
Weighted Average					**4.0%**		**3.75% – 4.5%**

To determine which party is the most 'at risk' in the event that the above loans default, expected loss rates were obtained from Moody's and DBRS. Using the Moody's Investors Service – Loss Given Default for Speculative Grade Companies dated December 4, 2015, the 4-year Idealized Expected Loss ranges from 0.00% for a triple A rated bond to 0.30% for an A3 rated bond. DBRS Expected Loss Ratings give an indication of the expected loss of a loan portfolio. As per a November 2016 publication, the 10-year expected loss rates range from 0.1% for a AAA rated bond to 1.7% for an A (low) rated bond.

OPG's at-risk investment of 5% of the total debt will be invested as junior subordinated debt in Tranche C, along with the Province's contribution of 5% of the total debt. Given that each of OPG's and the Province's junior subordinated debt percentages are higher than the default rates above, 100% of the risk is with both OPG and the Province since they are the last parties to get paid should there be any default with the debt.

In addition, OPG, as FSM, also has variability through its ability to earn variable fees, which may be positive or negative and limited to ± 2% of 5% of the total senior debt issuances in the period. In determining what amount would represent variability for OPG, management compared what would be material relative to the following factors:

- **Return on equity Excluding Accumulated Other Comprehensive Income (ROE) of about 4%** – OPG uses the ROE metric in its internal and external reporting to measure the performance of the company against its objective to provide value to its shareholder. Management believes that deriving a benchmark using OPG's ROE will provide a meaningful variable fee given the purpose of the metric. Management considered that any change to OPG's ROE of about 25% would represent a material impact to OPG's financial results (i.e. 1% of the average 4% ROE). In applying this information to the planned debt issuances for the FHP Program, OPG's at-risk investment of 5% of the total debt would equal $100 million, assuming an average debt issuance of $2 billion per year for the next 10 years based on the Fair Allocation Amount. Therefore, OPG believes that using a 1% benchmark and applying it to OPG's 5% investment, would equate to a meaningful return on its at-risk amount. Using the example provided, 1% on OPG's at-risk investment of $100 million would equal to $1 million.
- **Spread on the junior subordinated debt** – management's current pricing estimate for the Tranche C debt is about 5.5% and the cost to OPG is 4%, which amounts to a spread of 1.5%. One percent out of the 1.5% spread OPG will be realizing from its investment in the Trust represents two-thirds of the total spread, which is deemed to be material.

These consideration factors indicate that 1% of OPG's 5% investment in the Trust represents a meaningful variable return for OPG. Management will re-assess the variable fee return periodically and when required to ensure it remains meaningful for OPG (i.e. if there are material changes to the corporate ROE or to the actual junior subordinated spread). Management expects that the fees OPG will earn from its role as FSM will not be material relative to OPG's financial reporting thresholds. The estimate of the range for the base management fee is $1 million and will peak at $11 million at year 2029. Compared to OPG's generation revenues of over $5 billion in 2016, this amount is relatively not material. Nonetheless, given that the variable management fees create variability that it will pass along to OPG, management concludes that it is not a variable interest according to ASC 810-10-55-28 which states (emphasis added):

> *"Example 3 (see paragraph 810-10-55-55) is intended to demonstrate how to apply the provisions of this guidance on determining the variability to be considered, including whether arrangements (such as derivative instruments or guarantees of value) <u>create variability (and are therefore not variable interests</u>) or absorb variability (and are therefore variable interests)."*

<u>Conclusion</u>: On the basis of the above considerations, management concludes that the primary variability the Trust was designed to create is the credit risk through the subordination of OPG's investment in the GA deferral asset. Given that this creates variability, it is not a variable interest per ASC 810-10-55-28.

As the variability has been determined, the next step is to determine whether OPG has a variable interest in the Trust per the following excerpt from *<u>ASC 810-10-25-23:</u>*

For purposes of paragraphs 810-10-25-21 through 25-36, interest holders include all potential variable interest holders (including contractual, ownership, or other pecuniary interests in the legal entity). After determining the variability to consider, the reporting entity can determine which interests are designed to absorb that variability.

In identifying the variable interest in the Trust, management looked to the following guidance:

Excerpt from *<u>ASC 810-10-25-26</u>*:

Typically, assets and operations of the legal entity create the legal entity's variability (and thus, are not variable interests), and liabilities and equity interests absorb that variability (and thus, are variable interests). Other contracts or arrangements may appear to both create and absorb variability because at times they may represent assets of the legal entity and at other times liabilities (either recorded or unrecorded). The role of a contract or arrangement in the design of the legal entity, regardless of its legal form or accounting classification, shall dictate whether that interest should be treated as creating variability for the entity or absorbing variability.

Since the GA deferral asset and the corresponding credit risk is the variability created by the Trust, the Trust's financing will be the liability and thereby the variable interest that absorbs the variability from the asset.

Excerpt from <u>ASC *810-10-55-19:*</u>

The identification of variable interests involves determining which assets, liabilities, or contracts create the legal entity's variability and which assets, liabilities, equity, and other contracts absorb or receive that variability. The latter are the legal entity's variable interests. The labeling of an item as an asset, liability, equity, or as a contractual arrangement does not determine whether that item is a variable interest. It is the role of the item — to absorb or receive the legal entity's variability — that distinguishes a variable interest. That role, in turn, often depends on the design of the legal entity.

OPG as FSM will be able to charge the Trust management fees pursuant to section 19(3) of the Act. A component of the management fees will be performance-driven, based on OPG's capabilities in marketing the Trust's external financing (i.e. variable fees). Therefore, there is an inherent variability in the management fees and since it is dependent on OPG's actions, OPG is at risk and would be responsible for absorbing this variability.

Excerpt from *<u>ASC 810-10-55-23</u>:*

Investments in subordinated beneficial interests or subordinated debt instruments issued by a VIE are likely to be variable interests. The most subordinated interest in a VIE will absorb all or part of the expected losses of the VIE.

The most subordinated debt in the Trust pursuant to the proposed financing structure will be Tranche C, held by OPG. Therefore, OPG will be the first party (in terms of debtors holding tranche debt) to absorb all or part of any expected losses of the Trust.

On the basis of the above considerations, management concludes that OPG does have a variable interest in the Trust through its junior subordinated debt.

Finally, management also evaluated whether OPG's variable interest in the Trust pertains to a specific asset, a silo or the entity as a whole.

Excerpt from *ASC 810-10-25-55:*

A variable interest in specified assets of a VIE (such as a guarantee or subordinated residual interest) shall be deemed to be a variable interest in the VIE only if the fair value of the specified assets is more than half of the total fair value of the VIE's assets or if the holder has another variable interest in the VIE as a whole (except interests that are insignificant or have little or no variability).

The Trust's primary asset will be the GA deferral asset, in which OPG will have a variable interest in. This asset will represent the majority of the asset held by the Trust and its fair value will constitute the fair value of a large portion of the Trust, meeting the threshold wherein OPG has a variable interest in more than half of the total fair value of the Trust's assets. Therefore, OPG has a variable interest in the Trust as a whole.

e) Is the Trust a variable legal entity (VIE)?

Based on *ASC 810-10-15-14*, an entity is a VIE if it has any one of the following characteristics:

- *The entity does not have enough equity to finance its activities without additional subordinated financial support.*

  Met. Despite the Trust being structured to be 100% debt financed as summarized in Table 1, OPG's at-risk investment in the Trust is required to carry out its business purpose of running the FHP Program and refinancing the GA deferral. EY's FRD on Consolidation provides further guidance supporting that this criterion is met:

  "To be considered a voting interest entity, the entity must have equity investments at risk that are sufficient to permit it to carry on its activities without additional subordinated financial support (even if that support has been provided by one or more holders of an at risk equity investment). That is, the entity must have enough equity to induce lenders or other investors to provide the funds necessary at market terms for the entity to conduct its activities. As an extreme example, an entity that is financed with no equity is a VIE. An entity financed with some amount of equity also may be a VIE pending further evaluation."

- *The equity holders, as a group, lack the characteristics of a controlling financial interest.*

  Not met. The Trust has no equity financing and OPG, as the Financial Services Manager, will have the ability to select the Trustee to oversee the management and operations of the Trust.

- *The entity is established with non-substantive voting rights (i.e., an anti-abuse clause).*

  Not met. OPG will be the sole unit holder of the Trust.

Conclusion: The Trust does not have enough equity to finance its activities to fulfil its business purpose without OPG's at-risk investment. As this criterion is met, the Trust is a **VIE**.

2. Should OPG consolidate the Trust?

In order for OPG to consolidate Trust, it must be the primary beneficiary of the Trust.

ASC 810-10-25-38

A reporting entity shall consolidate a VIE when that reporting entity has a variable interest (or combination of variable interests) that provides the reporting entity with a controlling financial interest on the basis of the provisions in paragraphs 810-10-25-38A through 25-38J. The reporting entity that consolidates a VIE is called the primary beneficiary of that VIE.

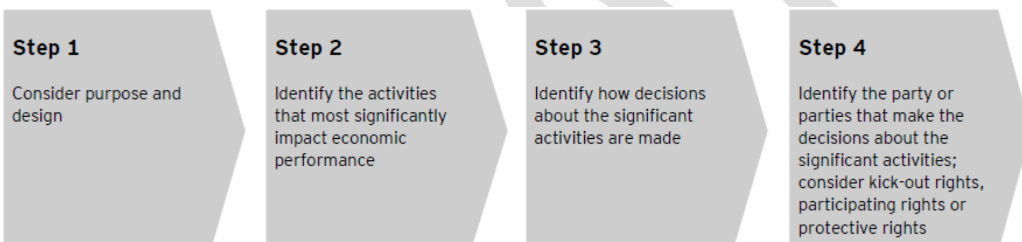
Excerpt from ASC 810-10-25-38A

A reporting entity shall be deemed to have a controlling financial interest in a VIE if it has both of the following characteristics:

a) *The power to direct the activities of a VIE that most significantly impact the VIE's economic performance*
b) *The obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. The quantitative approach described in the definitions of the terms expected losses, expected residual returns, and expected variability is not required and shall not be the sole determinant as to whether a reporting entity has these obligations or rights.*

a) Does OPG have the power to direct the activities of the Trust that most significantly impact the Trust's economic performance?

To evaluate whether OPG has the power to direct the activities of the Trust that most significantly impact its economic performance, management utilized the following framework:



Source: Financial Reporting Developments: Consolidation, September 2016, Ernst & Young LLP

In addition, refer to Appendix B for management's evaluation of whether OPG is acting as the principal or the agent as it relates to this transaction. That analysis concludes that OPG is the principal and also requires OPG to consolidate its interest in the Trust.

Power to direct the activities of the Trust that most significantly impact the Trust's economic performance
Purpose and design of the Trust The purpose of the Trust is to allow OPG to participate in the Fair Hydro Plan and earn a return for its role as FSM through effectively managing the FHP Program. OPG is expected to earn a) management fee revenue and b) interest income on the subordinated debt issued by the Trust to OPG (acquired by OPG primarily via MOE equity injections).

Power to direct the activities of the Trust that most significantly impact the Trust's economic performance

Activities that most significantly impact economic performance

ASC 810-10-25-38B
A reporting entity must identify which activities most significantly impact the VIE's economic performance and determine whether it has the power to direct those activities. A reporting entity's ability to direct the activities of an entity when circumstances arise or events happen constitutes power if that ability relates to the activities that most significantly impact the economic performance of the VIE. A reporting entity does not have to exercise its power in order to have power to direct the activities of a VIE.

OPG has power to direct the following key activities of the Trust:

- OPG is to design the Financing Plan to reasonably align with the Fair Allocation Amount Pursuant to section 21 of Act. The Fair Allocation Amount, along with the requirements stipulated in section 14 of the General Regulation, guided the design of the Trust's Financing Plan. Although the Province determines the principles around the Fair Allocation Amount, management believes that it does not impact the activities of the Trust once the Trust has purchased the GA deferral asset from the IESO. OPG may also amend the Financing Plan at any time pursuant to section 21(6) of the Act without affecting CEAs that have already been determined or any existing debt.
- In executing the Financing Plan and managing the FHP Program, OPG will arrange to raise debt and service outstanding debt, and determine the capacity of the Trust to raise additional financing. This includes the task of evaluating and making decisions on financing alternatives, duration, and the strategy to minimize financing costs.
- OPG is to calculate the CEAs per section 15 of the Act and the OEB cannot change the amount provided by OPG when they are determining the new rates to charge specified consumers per section 15(4) of the Act.
- As outlined in section 4.4 of the Management Agreement, OPG as manager is responsible for a number of key tasks relating to the collection of CEAs, including in the event that credit/collections issues arise. OPG is responsible for the review of the IESO's monthly servicer reports to ensure that discrepancies in collection are adequately explained by the electricity vendors, enforcing the Trust's rights to collection by instituting any proceedings necessary to compel performance by the electricity vendors, and the review of the electricity vendors' records on CEAs on an annual basis.

How decisions about the significant activities are made

OPG has the ability to appoint and remove the Trustee of the Trust (and if applicable Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust. Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG. Refer to discussion of item #3 in Appendix A.

Party or parties that make the decision about the significant activities

ASC 810-10-25-38C
*A reporting entity's determination of whether it has the power to direct the activities of a VIE that most significantly impact the VIE's economic performance shall not be affected by the existence of **kick-out rights** or **participating rights** unless a single reporting entity (including its related parties and de facto agents) has the unilateral ability to exercise those kick-out rights or participating rights. A single reporting entity (including its related parties and de facto agents) that has the unilateral ability to exercise kick-out rights or participating rights may be the party with the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance. These requirements related to kick-out rights and participating rights are limited to this particular analysis and*

Power to direct the activities of the Trust that most significantly impact the Trust's economic performance

are not applicable to transactions accounted for under other authoritative guidance. ***Protective rights*** *held by other parties do not preclude a reporting entity from having the power to direct the activities of a variable interest*
 	
OPG as FSM makes the decision about the significant activities of the Trust. While there are a number of protective rights present (see below), management concludes that such rights are not substantive and do not materially impact OPG's power to direct the relevant activities of the Trust.
 	
Kick-out/Participating rights:
There are no kick-out or participating/veto rights held by the Province or any other parties which will preclude OPG from having the power to direct the Trust's key activities. Refer to discussion of item #3 in Appendix A.
 	
Protective rights:
 	
Indenture Trustee
• Section 8.10 of the MTI outlines that OPG as Manager (under the Management Agreement) and the IESO as Servicer (under the MTSA) may be terminated by the Indenture Trustee upon the occurrence and during the continuance of an Event of Default (defined in the MTI under section 8.01). As noted above, management believes that this ability of the Indenture Trustee is a form of a protective right and represents reasonable and commercial terms given they are acting on behalf of the specified creditors. Management also notes that this ability is only under limited circumstances where OPG as Manager or Servicer is not performing its duties and obligations at the appropriate level. Therefore, the presence of this provision does not provide the Indenture Trustee a controlling financial interest over the Trust.
 	
Province of Ontario
• Section 18 of the Act stipulates that the MOE can appoint a different FSM if OPG is "*unable or unwilling to do so*". Management considers that the failure to perform standard would fall under the "unable to" criterion specified by the section. If OPG is terminated in its role as FSM, it will not impact the recoverability of any debt or other obligations that were previously covered under the Change of Law Protection Agreement. If the MOE exercises this right and the Trust is not dissolved, it will only reduce the scope of activities of the Trust and it would not affect the power of OPG to direct the remaining activities of the Trust (i.e. OPG will still have some duties under the Management Agreement, however, duties that pertain to the FSM role will no longer apply). Should a new FSM be appointed if OPG is removed, a separate control assessment would be made at such time to determine which party (the new FSM or OPG as manager under the Management Agreement) has the power over the activities of the Trust. Management is of the view that since the conditions that encompass a failure to perform are within OPG's control, OPG has the ability to decide whether it will continue to be the FSM and not the Province.
• The Change of Law agreements provides the Province with the following protective rights:
    o they will be privy to all of the constating and program documentation prior to the start of the program (i.e. before first purchase of IESO's regulatory asset) in order to understand the obligations that the Province may need to assume if a protection/trigger event occurs,
    o for every debt issuance thereafter, OPG will provide certification confirming the debt is issued under significantly similar terms as the initial documentation.
    o OPG is required to deliver any material changes to previously provided transaction documents (excluding any changes to financial terms, rates or levels) and any new transaction documents, at least 10 business days in advance of making the material change or entering into the new agreement per section 2.01(b) of the process agreement. The Province has the right to object to these material changes or to the new transaction documents, only if the amendment or new transaction document has a "material effect" per section 3.04(b) of the process agreement.

Power to direct the activities of the Trust that most significantly impact the Trust's economic performance
OPG is also required to seek the consent of the Province if it wants to make changes to the program agreements or make certain changes to the approved obligations, if such action could reasonably be expected to have a material effect per section 2.02(a)(v). A "material effect" is defined as a material adverse effect on the obligations and rights of the Province under the protection agreement or the process agreement that materially differ from the terms or conditions included in previously review documentation and that relate to one of the following: i. the timing of or circumstances under which related payments would or may become due or accrue is inconsistent with the Fair Allocation Amount; ii. the appointment, obligations or duties of OPG as the Manager; iii. the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; iv. the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; v. the payment provisions and associated priorities set forth in the Trust Indenture; vi. compliance by the FSM with the then applicable Financing Plan; vii. compliance by the FSM or the Financing Entity with the Act or the General Regulation; or viii. the Province's rights of subrogation or assignment or its interests as a subrogee or an assignee. o Despite the ability of the Province to provide an objection or for the requirement for OPG to seek their consent, management believes that the nature of the conditions or instances where an objection could be raised do not impair OPG's ability to direct the key activities of the Trust. Specifically, for (ii) to (vii) above, management is of the view these items are structural or compliance in nature, and would not have a material impact to the way OPG as FSM would direct and control the key activities of the Trust (i.e. financing the GA deferral). For item (i), management believes that the basis for the objection has been sufficiently narrowed so that the Province can only object to material changes impacting the timing in payments of debt or other obligations if such change would be inconsistent with the Fair Allocation Amount. For the following reasons noted, management concludes that such rights are protective in nature and does not have any impact to OPG's consolidation of the Trust. o OPG is also required to deliver a process certificate under section 3.01 of the process agreement, on or before but not more than 5 business days, before the incurrence or any amendment of a funding obligation (as defined in the Act) which would exceed $5 million (e.g. individual invoices, blanket POs, debt issuances). Management expects that the materiality limit would only filter in OPG's management fees as the rest of the other obligations (other than debt) is expected to be less than $5 million. There are other post-incurrence/amendment reporting requirements outlined in section 2.01 (d) and (e) of the process agreement. Management concludes that these reporting requirements represent protective rights and do not impair or impact that way OPG would direct the activities of the Trust. o If there is a breach, the Province is entitled to deliver a suspension notice, where any new issuances of debt or any other new obligations of the Trust will not have the benefit of the Change of Law guarantee. Any existing debt would not be impacted. Management believes that this does not give the Province the power to direct the key activities of the Trust because a suspension notice will not lead to a default and would not impact the way OPG as FSM would manage the existing debt. OPG would continue to service existing debt through IESO payments of carrying costs during the moratorium and clean energy adjustments afterward, without issuing any new debt. In addition, OPG can still issue debt, without the Change of Law guarantee, although it will be at a higher rate to reflect the additional change of law risk.
<u>Assessment:</u> OPG has the ability to direct the activities of the Trust that most significantly impact the Trust's economic performance. In its role as FSM, OPG will be in charge of securing the financing and all the related decision-making and it can amend the Financing Plan at any time, without approval from the MOE. The Act gives the FSM the right to create financing entities, and only financing entities are allowed to acquire the GA deferral asset. Further, the financing entity does not have any positive

Power to direct the activities of the Trust that most significantly impact the Trust's economic performance
obligation to purchase a GA deferral asset if it does not want to or cannot. So long as OPG is the FSM, it has control over the FHP Program. If OPG ceases to be the FSM, a new and separate consolidation analysis would be conducted at such time to determine which party, if any, would consolidate the Trust.

b) Does OPG have the obligation to absorb losses of the Trust that could be potentially significant to the Trust or the right to receive benefits from the Trust that could be potentially significant to the Trust?

The FASB does not provide specific guidance or any bright lines to assist a reporting entity in evaluating the above.

As such, management has considered the following facts:

- The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the FSM of the Trust. OPG is expected to realize management fees from its activities with the Trust that management determined to be material, per the discussion above. In addition, OPG is expected to benefit from the interest income it will earn from its subordinated debt investment.
-
- OPG, through ownership of the junior subordinated debt, is exposed to potential losses should the right for future collection from specified consumers (which will not commence until after May 1, 2021) be adversely impacted in anyway.

OPG has the right to receive benefits from the Trust in the form of the variable management fee and the interest income from its subordinated debt investment. On the other hand, OPG has the obligation to absorb losses through its 49% subordinated debt investment in the Trust in the event there is an event of default and through the variable management fee which is tied to the actual interest rate on the senior debt issued during the period.

Management also consulted additional interpretive guidance in ascertaining whether OPG has the obligation to absorb the Trust's losses and the right to receive the Trust's benefits.

Section 8.3, Financial Reporting Developments: Consolidation, September 2016, Ernst & Young LLP:

If a reporting entity has concluded that it has a variable interest, it likely will meet the benefits criterion. If a reporting entity has a variable interest in a VIE, we believe there is a presumption that the reporting entity has satisfied the benefits criterion.

Conclusion: OPG previously concluded that it has a variable interest in the Trust (see above for discussion) and thereby, per the interpretive guidance above, it satisfies the benefits criterion. Therefore, OPG has both the power to direct the activities of the Trust that most significantly impact the Trust's economic performance and the obligation to absorb the losses and/or right to receive the benefits of the Trust, indicating that it is the primary beneficiary of the Trust. Therefore, OPG will consolidate the Trust.

Note: Management consulted *ASC 980-10 Regulated Operations – Consolidation* to determine any further guidance that may be applicable as it relates to the consolidation of the Trust by OPG. It was noted that the only additional commentary in this subtopic pertained to the treatment of profit on sales by a parent company to a regulated affiliate and financing through construction intermediaries. Neither of these items are applicable to the arrangement between OPG and the Trust.

3. How should the Trust be presented and disclosed in OPG's consolidated financial statements?

As the Trust will be consolidated under the Variable Interest Entity Model as discussed above, the presentation and disclosure guidance related to this model have been evaluated here, along with any other general presentation and disclosure matters.

General Presentation and Disclosure Matters

ASC 810-10-45-1
In the preparation of consolidated financial statements, intra-entity balances and transactions shall be eliminated. This includes intra-entity open account balances, security holdings, sales and purchases, interest, dividends, and so forth. As consolidated financial statements are based on the assumption that they represent the financial position and operating results of a single economic entity, such statements shall not include gain or loss on transactions among the entities in the consolidated group. Accordingly, any intra-entity profit or loss on assets remaining within the consolidated group shall be eliminated; the concept usually applied for this purpose is gross profit or loss (see also paragraph 810-10-45-8).

ASC 810-10-45-4
When a subsidiary is initially consolidated during the year, the consolidated financial statements shall include the subsidiary's revenues, expenses, gains, and losses only from the date the subsidiary is initially consolidated.

Met. When preparing its consolidated financial statements for 2017, OPG will eliminate all intercompany balances and transactions with the Trust. OPG's consolidated financial statements will present the required disclosures including the Trust's revenues, expenses, gains, and losses only from the date the Trust is initially consolidated (i.e. December 2017).

ASC 810-10-45-25
A reporting entity shall present each of the following separately on the face of the statement of financial position:

a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE

Applicable. If and when there is excess cash from the IESO's pre-funding at the end of a reporting period, management will assess the materiality, and present the required disclosure accordingly.

b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary.

Applicable. As it relates to the liabilities of the Trust, creditors (i.e. bondholders) do not have recourse to the general credit of the primary beneficiary (i.e. OPG).

ASC 810-10-50-1
Consolidated financial statements shall disclose the consolidation policy that is being followed. In most cases this can be made apparent by the headings or other information in the financial statements, but in other cases a note to financial statements is required.

Met. OPG currently has the following disclosure for the consolidation policy it follows within its consolidated financial statements as part of the *Summary of Significant Accounting Policies*:

"The consolidated financial statements of the Company include the accounts of OPG and its majority-owned subsidiaries, and variable interest entities (VIEs) where OPG is the primary beneficiary. All significant balances and intercompany transactions have been eliminated on consolidation."

The Trust would fall under the "variable interest entities" discussed above.

VIE Presentation and Disclosure Matters

Given OPG is a public entity, the presentation and disclosure requirements a public entity is required to make about VIEs are discussed below

ASC 810-10-50-7

Disclosures that a public entity shall make about VIEs are organized as follows:
a. *Disclosure objectives* **[see 810-10-50-8 below]**
b. *Aggregation of certain disclosures* **[see 810-10-50-9 to -50-11 below]**
c. *Public entity that is a primary beneficiary, holds significant variable interest, or is a sponsor*
d. *The primary beneficiary of a VIE* **[see 810-10-50-12 to -50-14 below. ASC 810-10-50-12 to -50-13 are not applicable]**
e. *Public entity that holds a significant variable interest or is a sponsor but is not the primary beneficiary* **[Not applicable as OPG is the primary beneficiary]**
f. *Scope-related disclosures* **[see 810-10-50-16 below]**
g. *Non-transferor sponsor or non-transferor servicer of a qualifying special-purpose entity* **[see 810-10-50-19]**

See below for detailed analysis of the above requirements.

ASC 810-10-50-8
The principal objectives of this Section's disclosures for public entities are to provide financial statement users with an understanding of all of the following:
- a. *The significant judgments and assumptions made by a reporting entity in determining whether it must do any of the following:*
  1. *Consolidate a VIE*
  2. *Disclose information about its involvement in a VIE*
- b. *The nature of restrictions on a consolidated VIE's assets reported by a reporting entity in its statement of financial position, including the carrying amounts of such assets*
- c. *The nature of, and changes in, the risks associated with a reporting entity's involvement with the VIE*
- d. *How a reporting entity's involvement with the VIE affects the entity's financial position, financial performance, and cash flows.*

A reporting entity shall consider these overall objectives in providing disclosures. To achieve those objectives, a reporting entity may need to supplement the disclosures required in this Section, depending on the facts and circumstances surrounding the VIE and the reporting entity's interest in that VIE.

See below for detailed analysis for all requirements.

ASC 810-10-50-9
Disclosures about VIEs may be reported in the aggregate for similar entities if separate reporting would not provide more useful information to financial statement users. A reporting entity shall disclose how similar entities are aggregated and shall distinguish between:

- a. *VIEs that are not consolidated because the reporting entity is not the primary beneficiary but has a variable interest*
- b. *VIEs that are consolidated.*

In determining whether to aggregate VIEs, the reporting entity shall consider quantitative and qualitative information about the different risk and reward characteristics of each VIE and the significance of each VIE to the entity. The disclosures shall be presented in a manner that clearly explains to financial statement users the nature and extent of an entity's involvement with VIEs.

Currently, OPG classifies its interests in both the Nuclear Waste Management Organization (NWMO) and the PSS Generating Station Partnership (PSS) as VIEs. However, the nature of NWMO and PSS is significantly different from that of the Trust. Aggregating details about the Trust and its classification as a VIE would not provide more useful information to financial statement users. As such, OPG will include separate discussion regarding the Trust and its classification as a VIE as part of the *Summary of Significant Accounting Policies* in the notes to the financial statements.

ASC 810-10-50-10

A reporting entity shall determine, in light of the facts and circumstances, how much detail it shall provide to satisfy the requirements of the Variable Interest Entities Subsections. A reporting entity shall also determine how it aggregates information to display its overall involvements with VIEs with different risk characteristics. The reporting entity must strike a balance between obscuring important information as a result of too much aggregation and overburdening financial statements with excessive detail that may not assist financial statement users to understand the reporting entity's financial position. For example, a reporting entity shall not obscure important information by including it with a large amount of insignificant detail. Similarly, a reporting entity shall not disclose information that is so aggregated that it obscures important differences between the types of involvement or associated risks.

As discussed above, OPG aims to include a separate discussion on the Trust and its classification as a VIE within the Summary of Significant Accounting Policies section of the notes to the financial statements. The depth of the discussion will aim to strike a balance between OPG's existing disclosure on its classification of the NWMO and PSS as VIEs.

ASC 810-10-50-11

The public-entity disclosures required in the Variable Interest Entities Subsection of this Section may be provided in more than one note to financial statements, as long as the objectives in paragraph 810-10-50-8 are met. If the disclosures are provided in more than one note to financial statements, the reporting entity shall provide a cross reference to the other notes to financial statements that provide the disclosures prescribed in the Variable Interest Entities Subsection of this Section for similar VIEs.

OPG aims to provide all disclosures related to the Trust's classification as a VIE within one note to the financial statements; cross references will be included if said disclosures span more than one note.

ASC 810-10-50-12
A public entity that is a primary beneficiary of a VIE, that holds a significant variable interest in a VIE but is not the primary beneficiary, or that is a sponsor that holds a variable interest in a VIE shall disclose all of the following: ***Not applicable – OPG is the primary beneficiary***

a. *Its methodology for determining whether the reporting entity is (or is not) the primary beneficiary of a VIE, including, but not limited to, significant judgments and assumptions made. One way to meet this disclosure would be to provide information about the types of involvements a reporting entity considers significant, supplemented with information about how the significant involvements were considered in determining whether the reporting entity is, or is not, the primary beneficiary.*

b. *If the conclusion to consolidate a VIE has changed in the most recent financial statements (for example, the VIE was previously consolidated and is not currently consolidated), the primary factors that caused the change and the effect on the reporting entity's financial statements.*

c. *Whether the reporting entity has provided financial or other support during the periods presented to the VIE that it was not previously contractually required to provide, including both of the following:*
    1. *The type and amount of support, including situations in which the reporting entity assisted the VIE in obtaining another type of support*
    2. *The primary reasons for providing the support.*

d. *Qualitative and quantitative information about the reporting entity's involvement (giving consideration to both explicit arrangements and implicit variable interests) with the VIE, including, but not limited to, the nature, purpose, size, and activities of the VIE, including how the VIE is financed.*

ASC 810-10-50-13
A VIE may issue voting equity interests, and the reporting entity that holds a majority voting interest also may be the primary beneficiary of the VIE. If so, the disclosures in the preceding paragraph and the following paragraph are required if the activities of the VIE are primarily related to securitizations or other forms of asset-backed financings or single-lessee leasing arrangements.

Not applicable – The Trust is designed and structured to be 100% debt financed throughout its existence.

ASC 810-10-50-14

The primary beneficiary of a VIE that is a business shall provide the disclosures required by Topic 805. The primary beneficiary of a VIE that is not a business shall disclose the amount of gain or loss recognized on the initial consolidation of the VIE. The primary beneficiary of a VIE shall disclose all of the following:

An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs, or other economic benefits directly to investors or other owners, members, or participants. Additional guidance on what a business consists of is presented in paragraphs 805-10-55-4 through 55-9.

a. *The carrying amount and classification of the VIE's assets and liabilities in the statement of financial position that are consolidated in accordance with the guidance in the Variable Interest Entities Subsections of this Subtopic, including qualitative information about the relationship(s) between those assets and associated liabilities. For example, if the VIE's assets can be used only to settle specific obligations of the VIE, the reporting entity shall disclose qualitative information about the nature of the restrictions on those assets.*

    Applicable. The required disclosures will be presented.

b. *Lack of recourse if creditors (or beneficial interest holders) of a consolidated VIE have no recourse to the general credit of the primary beneficiary.*

Applicable. As it relates to the liabilities of the Trust, creditors (i.e. bondholders) do not have recourse to the general credit of the primary beneficiary (i.e. OPG).

c. *Terms of arrangements, giving consideration to both explicit arrangements and implicit variable interests, that could require the reporting entity to provide financial support (for example, liquidity arrangements and obligations to purchase assets) to the VIE, including events or circumstances that could expose the reporting entity to a loss.*

    Applicable. The material terms related to OPG's subordinated debt investment in the Trust will be disclosed.

ASC 810-10-50-16

A reporting entity that does not apply the guidance in the Variable Interest Entities Subsections of this Subtopic to one or more VIEs or potential VIEs because of the condition described in paragraph 810-10-15-17(c) shall disclose all of the following information:

a. The number of legal entities to which that guidance is not being applied
b. The reason why the information required to apply that guidance is not available
c. The nature, purpose, size (if available), and activities of the legal entities
d. The nature of the reporting entity's involvement with the legal entities
e. The reporting entity's maximum exposure to loss because of its involvement with the legal entities
f. The amount of income, expense, purchases, sales, or other measure of activity between the reporting entity and the legal entities for all periods presented.

Not applicable. The Trust did not meet any of the scope exceptions related to the VIE guidance. Refer to the discussion above as to why the Trust is not representative of any of the following scope exceptions discussed in *810-10-15-17(c)*: not-for-profit entities, separate accounts of life insurance entities, a VIE created before December 31, 2003 or a legal entity deemed to be a business.

ASC 810-10-50-17
A public entity shall disclose information that provides financial statement users with an understanding of its involvement with the qualifying special-purpose entity if that public entity is either of the following:
a. Non-transferor sponsor. A sponsor that holds a variable interest in a qualifying special-purpose entity but was not the transferor (non-transferor entity) of financial assets to the qualifying special-purpose entity

Not applicable. OPG is the primary beneficiary, not the sponsor, of the Trust.

b. Non-transferor servicer. A servicer of a qualifying special-purpose entity that holds a significant variable interest in the qualifying special-purpose entity but was not the transferor (non-transferor) of financial assets to the qualifying special-purpose entity.

Not applicable. OPG is the primary beneficiary, not the sponsor, of the Trust.

Overall Conclusion:

The conditions outlined in Appendix A have all been addressed in a satisfactory manner either through provisions of the Act or regulations or through the various program agreements. Further, no new conditions have been introduced that would conflict with OPG's control of the Trust. Therefore, management believes that consolidation of the Trust is supportable under US GAAP.

APPENDIX A:

Terms necessary for OPG to consolidate the Fair Hydro Trust

Legend:

✓	Addressed by either: • *Bill 132 – An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998* • Ontario Regulation 206/17 (General)
π	Addressed by the Trust's key program agreements and/or documents including, but not limited to the: • Management Agreement • Master Trust Indenture • Financing Plan • Subordinated Debt Pricing Protocol • Change of Law Protection and Process Agreements
Ω	General requirement that does not have to be addressed by legislation, regulations, or the Trust's key program agreements or documents.

Issue	No.	Requirements
Directive	1 ✓	The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise. **The Province will not direct OPG to participate in the Fair Hydro Plan. A letter was issued from the Minister of Energy to OPG on April 13th requesting OPG's involvement in the implementation of the Fair Hydro Plan. OPG's Board Chair responded to the Minister on April 18th committing OPG to work with the IESO and OEB to develop a plan. OPG will have the option to prepare, implement and amend a financing plan (in accordance with principles set out in legislation) and propose the adoption of such plan as the 'Financing Plan'. OPG will have the right to withdraw its financing plan at any time.**
Trust	2 π	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot'). **Article 4 of the Management Agreement between the Trust and OPG outlines all of the duties and obligations of OPG as the manager. Decisions over all key and day-to-day activities of the Trust (as described above) will be made by OPG.**
	3 π	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.

Issue	No.	Requirements
		OPG appointed BNY Trust Company of Canada as the Indenture Trustee and Computershare Trust Company of Canada as the Issuer Trustee. Under 6.2 of the Declaration of Trust, the unitholders of the Trust can remove the Issuer Trustee by majority vote. FHP2017 Inc. is a wholly-owned subsidiary of OPG and owns 99.9999% of the units in the Trust, therefore, OPG will have the ability to remove the Issuer Trustee. The Indenture Trustee may only be removed by the bondholders whom it represents. This is a typical commercial arrangement and management concludes that there are no issues presented. **Section 8.10 of the MTI outlines that OPG as Manager (under the Management Agreement) and the IESO as Servicer (under the MTSA) may be terminated by the Indenture Trustee upon the occurrence and during the continuance of an Event of Default (defined in the MTI under section 8.01). As noted above, management believes that this ability of the Indenture Trustee is a form of a protective right and represents reasonable and commercial terms given they are acting on behalf of the specified creditors. Management also notes that this ability is only under limited circumstances where OPG as Manager or Servicer is not performing its duties and obligations at the appropriate level. Therefore, the presence of this provision does not provide the Indenture Trustee a controlling financial interest over the Trust.**
	4 ✓	The Province cannot have the right to veto OPG's decisions about the activities of the Trust that most significantly impact its economic performance. OPG must have the power over such of the Trust and be compensated. The activities of the Trust that most significantly impact its economic performance include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust. **Refer to Item 2 above for OPG's ability to control all of the Trust's key and day-to-day activities. None of the program agreements gives the Province any veto rights.** **The General Regulation under the section "Financial Services Manager – Fees" outlines OPG's fees as FSM.** **OPG has prepared and delivered to the MOE a financing plan, which outlines the key principles, assumptions and methodologies that will guide OPG in its funding decisions.**
	5	OPG must have the power to determine or change operating and financing policies of the Trust, which will affect its obligation to absorb losses and/or right to receive benefits. **OPG as FSM is required to administer and execute on the Financing Plan that it delivers to the MOE. Periodically, as required, OPG has the ability to update the Financing Plan in response to significant changes in assumptions. OPG's fees as FS per the General Regulation provide that it will be subject to variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as FSM of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.**

Issue	No.	Requirements
	6 TT	The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following: a. The Trust b. The most subordinated debt of the Trust **The Province's equity injections into OPG will be invested as subordinated debt in the Trust. The Financing Plan outlines the step-lock of funding source outlined in the table below. Every time an investment asset is purchased, debt will be sourced in the same percentages, which means that the Province's indirect funding will not exceed 50% (i.e. it will be limited to an indirect funding of 49%). Refer to table 1 above for the financing structure. Appendix B provides further analysis on the relationship between OPG and the Province under the principal vs. agent guidance. The most subordinated debt of the Trust in Tranche C will be comprised of 50% Province's equity contribution and 50% OPG's investment.**
	7 TT	OPG must own at least 50% of the most subordinated debt and must be no less than 5% of the debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. **Table 1 shows the financing structure of the Trust and the same is outlined in the Financing Plan. Refer to the discussions in point #6 above and the accompanying analysis in Appendix B.**
	8 TT ✓	OPG must have the right to receive benefits by exercising its authority, which shall be accomplished as follows: a. The cash flow from the investment 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 will be benefitting from the interest it earns on its subordinated debt investment as follows:** • **earning the full rate it charges to the Trust on the Province's portion (39% in Tranche B and 5% in Tranche C) because there is no cost to OPG of the Province's equity injection** • **earning the spread between OPG's cost of debt and the rate its charging the Trust on its 5% investment in Tranche C** **OPG will also be earning meaningful management fees pursuant to the General Regulation as described under the section *Background and Transactional Highlights*.**
	✓	b. 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 **Pursuant to the Act, OPG has prepared a draft copy of the Financing Plan and delivered it to the MOE. Upon finalization, a final copy of the Financing**

Issue	No.	Requirements
		Plan will be delivered to the Minister. The Financing Plan outlines the key principles, assumptions and methodologies that will guide OPG in its funding strategy and decisions. The Financing Plan is required to follow general parameters and principles as set forth in the Act and the General Regulation, however, all funding strategies and decisions will be made by OPG. OPG, as FSM, will receive variable compensation related to the decisions it makes through the variable fee.
	π	c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity. **Refer to Table 2 for the tiered-debt financing structure of the Trust and the indicative pricing for each debt tranche (which are also outlined in the Financing Plan). The indicative interest rates for each tranche is based on an assumed credit rating and each level is differentiated. OPG's exposure in holding the most subordinated debt in Tranche C will receive a commercial rate of return consistent with its risk profile. The final rates (and therefore spreads) will be determined when the first tranche of debt is acquired to purchase GA deferral assets. The credit range for each debt tranche will be determined by the overall credit strength of the financing structure and its resilience under various credit stress scenarios (i.e. the subordinated debt will be priced accordingly in relation to the senior debt using standard market pricing practices). The concept of subordination of OPG's investment in the Trust will be documented in the Subordinated Debt Pricing Protocol between OPG as FSM and the Ontario Financing Authority.**
	π	d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. **OPG will be able to capture the pricing difference between cost of financing and benchmark for interest through the performance fee which is described in point 8a) above. Also, the discussion on point 8c) above states that OPG's investment in Tranche C will receive a commercial rate of return consistent with its risk profile.**
	Ω	OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive. **OPG, as the reporting entity, has participated significantly in the design of the Trust through extensive involvement in the drafting of the Act, regulations, the MTSA, MTI and other program documents.**
	π	Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate),

Issue	No.	Requirements
		OFA may provide bridge financing beyond the designated percentage for a defined period. **The Change of Law Protection Agreement provides bondholders a limited guarantee if the Province changes the Fair Hydro legislation or regulations or passes other legislation/regulation that materially adversely affects the ability of the Trust to service interest or principal payments on its debt, or the Act is declared invalid/unconstitutional.**
Legislation	9 ✓	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. **During the period from December 1, 2017 to July 31, 2021, the IESO will pay for the monthly carrying costs of the Trust pursuant to section 9.1 (1) of the General Regulation. Specified consumers are obligated to pay CEAs after May 1, 2021 pursuant to the Act.**
	10 ✓	The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee. **The Act and regulations have been designed to limit the Province's involvement on an on-going basis. To effect the conditions above, the following have been established:** • **25% electricity bill reduction for specified consumers effective as of July 1, 2017 under section 9 of the Act (inclusive of an 8% reduction from a rebate of the provincial portion of HST on electricity bills for specified consumers)** • **Determination of the GA deferral asset/IESO's Regulatory asset per section 15 of the General Regulation and section 23 of the Act** • **Electricity vendors have the obligation to invoice specified consumers (section 17(1) of the Act) and collect the CEAs (section 17(3) of the Act). The IESO then receives the CEA collections from electricity vendors (section 16(1) of the Act) and remits it to the Trust who holds the GA deferral asset (section 16(4) of the Act).** • **During the period from December 1, 2017 to July 31, 2021, the IESO will pay for the carrying costs of the Trust pursuant to section 9.1 (1) of the General Regulation. These costs then are added to the variance account which forms the regulatory asset, which specified consumers have the ultimate obligation to bear.** • **OPG is to calculate the CEAs per section 15 of the Act and the OEB cannot change the amount provided by OPG when they are determining the new rates to charge specified consumers per section 15(4) of the Act** • **The moratorium period where CEAs cannot be collected under section 21(4) of the Act, and the IESO may not collect balances in its variance**

Issue	No.	Requirements
		account per section 25(3) from specified consumers established the timelines for CEA collection. After this point in time, CEAs can be collected from specified consumers and the IESO can also collect any balance in its variance account • **The OEB reviews OPG's proposed management fees using market comparable data and can only challenge OPG's proposal if the fees are materially inconsistent under sections 10.6, 10.9, 10.10, and 10.13 of the General Regulation.** • **OPG is to design the Financing Plan to reasonably align with the Fair Allocation Amount Pursuant to section 21 of Act. The Fair Allocation Amount, along with the requirements stipulated in section 14 of the General Regulation, guided the design of the Trust's Financing Plan. Although the Province determines the principles around the Fair Allocation Amount, management believes that it does not impact the activities of the Trust once the Trust has purchased the GA deferral asset from the IESO.** • **OPG may amend the Financing Plan at any time pursuant to section 21(6) of the Act without affecting CEAs that have already been determined or any existing debt.** • **The Financing Plan outlines the duration of the financing period for the FHP Program, expected to be from 2017 to 2047. The Financing Plan also outlines the key principles, assumptions and methodologies that will guide OPG in its funding decisions.** • **The Province cannot materially adversely impact the recoverability of the existing GA deferral assets through legislative action as it has provided change of law protection the Change of Law Protection Agreement.**
	11 ✓	The Legislation must be written in accordance with all applicable laws and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. **The determination of the GA deferral asset/IESO's Regulatory asset is outlined in section 15 of the General Regulation and section 23 of the Act.**
	12 TT	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible. **The program agreement and documents, as well as the Act and General Regulation, where applicable, reflect the terms discussed above. [MONITOR]**

APPENDIX B:

Is OPG acting as the principal or agent as it relates to its duties and responsibilities over the Trust?

ASC 810-10-55-37

Fees paid to a legal entity's decision maker(s) or service provider(s) are not variable interests if all of the following conditions are met:

a. *The fees are compensation for services provided and are commensurate with the level of effort required to provide those services.*
b. *Subparagraph superseded by Accounting Standards Update No. 2015-02.*
c. *The decision maker or service provider does not hold other interests in the VIE that individually, or in the aggregate, would absorb more than an insignificant amount of the VIE's expected losses or receive more than an insignificant amount of the VIE's expected residual returns.*
d. *The service arrangement includes only terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated at arm's length.*
e. *Subparagraph superseded by Accounting Standards Update No. 2015-02.*
f. *Subparagraph superseded by Accounting Standards Update No. 2015-02.*

In reference to the above, EY's interpretive guidance stated the following:

Section 5.4.13 - Financial Reporting Developments: Consolidation, September 2016, Ernst & Young LLP:

The guidance is intended to allow a decision maker or service provider to determine whether it is acting as a fiduciary or an agent rather than as a principal. If a decision maker or service provider meets all three conditions, it is acting as an agent…. If, however, a decision maker or service provider fails to meet any of the three conditions, the fee would be deemed a variable interest and the decision maker or service provider may need to consolidate the entity.

Under the proposed financing structure summarized in Table 1, OPG has subordinated interests in the Trust, which means that it is the first party to absorb the Trust's losses or receive the Trust's residual returns. For example, should the Trust encounter difficulty collecting from ratepayers, OPG will be the last to receive the amounts it is owed, thereby the most likely to absorb any losses. Similarly, interest and other costs on the senior debt will be paid first, with OPG then receiving the margin as residual returns. As such, OPG holds variable interests in the Trust that would absorb more than insignificant amount of the Trust's expected losses or receive more than an insignificant amount of the Trust's expected residual returns. Therefore, criterion (c) above has not been met, indicating that OPG is a principal in the arrangement, further supporting the need to consolidate the Trust.

In addition, Section 3.4 (k) of the MTSA notes that the IESO in its capacity as Servicer *"… shall hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.6 without any surcharge, fee, offset, charge or other deduction."*, where the Issuer is the Trust. This provision reinforces that OPG, via its interest in the Trust, is the principal in the arrangement.