

From: [Gavin He](#)
To: [Gavin He](#); [Anna Strathy](#)
Subject: Conversation with Gavin He
Date: Wednesday, June 28, 2017 3:28:45 PM

Gavin He 3:07 PM:

Hi Anna, did Gadi get to the IESO credit facility package?

Anna Strathy 3:15 PM:

hi gavin, not yet, I have three things on my desk for him to sign when he's out of his next meeting before eod for sure

Gavin He 3:22 PM:

Thanks Anna!

From: [Anna Strathy](#)
To: [Gavin He](#); [Anna Strathy](#)
Subject: Conversation with Gavin He
Date: Wednesday, June 28, 2017 4:06:00 PM

Anna Strathy 4:01 PM:

hi
i have the IESO credit facility directive signed off
i'd bring it down to you but I'm just waiting for a call

Gavin He 4:03 PM:

Hi Anna
i will come up to get it

From: [Whitfield, Tobias P. \(MOF\)](#)
To: [Anna Strathy](#); [Gadi Mayman](#); [Ken Kandeepan](#); [Malle Hanslep \(MOF\)](#); [Veinot, Cindy \(TBS\)](#); [Mike Manning](#); [Ronald Kwan](#); [Scott Nelms \(ENERGY\)](#); [James Devine](#); [Carlos Yep](#); [Cengarle, John \(MOF\)](#); [Keley Katona \(ENERGY\)](#); [Mark Donaldson \(MOF\)](#); [Usman Zahid](#); [Anis Hirani](#); [John Kim](#); [Hresa Gavaris](#); [John Psinas](#)
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 1:55:32 PM
Attachments: [#24367979v3_TorysAtWork_ - Fair Hydro - MTSA \(Osler Oct 20 Draft\).DOCX](#)
[Blackline_Fair Hydro - Master Transfer Servicing Agreement \(Alternative Funding Rebate Regulation Version\) - 24367979v3.pdf](#)
[IESO Security Agreement.docx](#)
[#23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture.docx](#)
[Fair Hydro – Form of ISDA Schedule.docx](#)

FYI, Please see attached additional and revised documentation from OPG, including:

- 1 – Master Transfer and Servicing Agreement;
- 2 – IESO Security Agreement;
- 3 – Master Trust Indenture; and
- 4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Ramchandani, Rima [<mailto:rramchandani@torys.com>]
Sent: October 25, 2017 12:12 PM
To: Mansoori, Nina; Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: Feldman, Michael; Olusoga, Yinka; Saulnier, Brett; Ramchandani, Rima; WONG Leslie -LAWDIV; 'LEE John -TREASURY'; RYFA Ken -TREASURY
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Malle and team, attached is a revised draft of the MTSA (clean and blacklined to the prior draft circulated to Steve), together with an initial draft of the IESO security agreement (as a reminder, in order to achieve a AAA rating in light of the moratorium period, it has been proposed that IESO enter into this security agreement in favour of the financing entity as security for the performance of its regulatory obligation to pay carrying costs during the moratorium).

FYI, these documents are currently under review by the IESO and Stikeman.

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com



From: Mansoori, Nina

Sent: October-24-17 5:21 PM

To: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; STEPHEN.ASHBOURNE@blakes.com

Cc: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: RE: Fair Hydro -- Form of ISDA Schedule

All,

We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]

as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Transferor and Servicer

- and -

■

as Indenture Trustee

Dated as of ■, 2017

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION.....	2
1.1 Definitions.....	2
1.2 Sections and Headings	8
1.3 Extended Meanings.....	8
ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET.....	9
2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset.....	9
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset.....	10
ARTICLE 3 ROLE OF THE SERVICER	11
3.1 Designation of Servicer.....	11
3.2 Forecast of Electricity Consumption	12
3.3 ISO Deferral.....	12
3.4 Clean Energy Adjustments and Electricity Vendors	12
3.5 Reporting.....	14
3.6 Remittances.....	15
3.7 Limits to Obligations	15
3.8 Servicing and Maintenance Standards	16
3.9 Appointments.....	16
3.10 Term.....	16
3.11 Resignation of Servicer.....	17
3.12 Mergers	17
3.13 The IESO Not to Resign as Servicer.....	17
3.15 IESO Security for CEA Remittances.....	18
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO	18
4.1 Representations and Warranties.....	18
4.2 Survival	20
4.3 Limitations on Representations and Warranties	21
ARTICLE 5 COVENANTS OF THE IESO.....	21
5.1 Existence	21
5.2 No Transfer or Liens.....	21
5.3 Notice of Liens.....	21
5.4 Compliance with Law	21
5.5 Covenants Related to the Investment Interest.....	21
5.6 Non-petition Covenants	22
5.7 Disclosure	22
5.8 Further Assurances.....	22
5.9 Access to Certain Records and Information Regarding Investment Interest.....	23
5.10 Maintenance of Operations	23
ARTICLE 6 IESO INDEMNITIES	23

TABLE OF CONTENTS
(continued)

	Page
6.1 Liability of the IESO; Indemnities.....	23
ARTICLE 7 SERVICER DEFAULT	25
7.1 Servicer Default	25
7.2 Appointment of Successor Servicer.....	26
7.3 Waiver of Past Defaults	27
7.4 Notice of Servicer Default	27
7.5 Cooperation with Successor Servicer	28
ARTICLE 8 MISCELLANEOUS	28
8.1 Amendment.....	28
8.2 Withholding Rights.....	28
8.3 No Partnership	28
8.4 Notices	28
8.5 Assignment	29
8.6 Limitations on Rights of Third Parties.....	29
8.7 Severability	30
8.8 Separate Counterparts; Electronic Delivery.....	30
8.9 Governing Law	30
8.10 Grant of Security Interest to Indenture Trustee	30
8.11 Limitation of Liability of Indenture Trustee.....	30
8.12 Limitation of Liability of the Issuer Trustee.....	30
8.13 Waivers	31

EXHIBIT

Exhibit A	–	Form of Transfer Notice
Exhibit B	–	Form of Monthly Report
Exhibit C	–	Form of Monthly Carrying Costs Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario

(the “**Issuer**”)

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the “**Transferor**” in its capacity as transferor, the “**Servicer**”, in its capacity as servicer, and the “**IESO**” in its capacity as both Transferor and Servicer)

- and -

[INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the “**Indenture Trustee**”)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the “**Act**”) for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the “**Regulatory Asset**”);

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer a Specified Portion of the Regulatory Asset to the Issuer on a fully-serviced basis, and pursuant to Section 26(3) of the Act, such a Transfer results in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the Specified Portion of the Regulatory Asset;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer desires to be so engaged;

AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors (as defined in the Indenture) and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

“Act” has the meaning ascribed thereto in the recitals;

“Agreement” means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions “herein”, “hereof”, “hereto”, “hereunder” and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

“Billing Period” means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

“Board” means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

“Carrying Costs” has the meaning ascribed to the term “carrying costs” in the Regulations;

“CEA Consumer Invoice Amounts” means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

“Clean Energy Adjustment” has the meaning ascribed to the term “clean energy adjustment” in the Act;

“Closing Date” means the date on which a Transfer is completed as specified in the applicable Transfer Notice;

“Co-Owner Agreement” means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

“Co-Owner Implementation Date” means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

“Collection Account” has the meaning ascribed thereto in Section [8.02(a)]¹ of the Indenture;

“Daily Remittance Event” means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

“Declaration of Trust” means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

“Electricity Vendor” has the meaning ascribed to the term “electricity vendor” in the Act;

“Electricity Vendor CEA Collections” means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

“Electricity Vendor Billing Period Report” means a report as contemplated by Section 17(s) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

- (a) its total CEA Consumer Invoice Amounts in such Billing Period;
- (b) its total Electricity Vendor CEA Collections during such Billing Period; and
- (c) such other information as may be agreed to.

“Eligible Deposit Account” means an account in Canada with an Eligible Institution;

“Eligible Institution” means:

¹ All cross-references to the Indenture to be conformed to the final version of the Indenture.

- (a) at any time before the Co-Owner Implementation Date, an “Eligible Institution” as defined in the Indenture; and
- (b) at any time on or after the Co-Owner Implementation Date, an “Eligible Institution” as defined in the applicable Co-Owner Agreement;

“Fair Hydro Variance Account” means the variance account established by the IESO pursuant to Section 24(1) of the Act;

“Financing Entity” has the meaning ascribed to the term “financing entity” in the Act;

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act;

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

“IESO” or “Independent Electricity System Operator” means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

[NTD: The Issuer may at some point have to publicly file this Agreement, and a copy of it will be circulated to the rating agencies. Therefore, it seems prudent not to include IESO bank account details in the Agreement.]

“IESO Deferral” has the meaning ascribed to the term “IESO deferral” in the Act;

“IESO Disclosure” has the meaning ascribed thereto in Section 5.7;

“IESO Segregated Account” has the meaning ascribed thereto in Section means the account established under Section 3.4(a);

“Indemnified Losses” has the meaning ascribed thereto in Section 6.1(a);

“Indemnified Party” has the meaning ascribed thereto in Section 6.1(a);

“Indenture” means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

“Indenture Trustee” means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

“Insolvency Event” means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise

acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

“Investment Asset” has the meaning ascribed to the term “investment asset” in the Act;

“Investment Interest” has the meaning ascribed to the term “investment interest” in the Act;

“Issuer” means ■, a trust formed under the laws of the Province of Ontario;

“Issuer Funding Obligations” means the Funding Obligations of the Issuer;

“Issuer Investment Interest” means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

“Issuer Share” means:

- (a) at any time before the Co-Owner Implementation Date, 100%; and
- (b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

“Issuer Trustee” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

“Lien” means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

“Management Agreement” means the management agreement dated ■, 2017 between the Manager and the Issuer;

“Manager” means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

“Minister” means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

“Monthly Carrying Costs” has the meaning ascribed thereto in Section 3.14(b);

“Monthly Carrying Costs Statement” has the meaning ascribed thereto in Section 3.14(b);

“Monthly Report” has the meaning ascribed thereto in Section 3.5(a);

“Officer’s Certificate” means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section [10.01] of the Indenture, and delivered to the Indenture Trustee;

“OPG” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

“Opinion of Counsel” means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

“Permitted Successor” means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

“Permitted Transfer” means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

“Person” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

“Proceeding” means any suit in equity, action at law or other judicial or administrative proceeding;

“Program Agreements” has the meaning ascribed thereto in the Indenture;

“Purchase Price” has the meaning ascribed thereto in Section 2.1(a);

“Rating Agency” has the meaning ascribed thereto in the Indenture;

“Rating Agency Condition” has the meaning ascribed thereto in the Indenture;

“Records” has the meaning ascribed thereto in Section 7.1;

“Regulations” means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

“Regulatory Asset” has the meaning ascribed thereto in the recitals;

“Released Parties” has the meaning ascribed thereto in Section 6.1(f);

“Remittance Date” means, in respect of each Billing Period, the [3rd] Business Day following the last day of each Billing Period;

“Required Servicer Rating” means ■; [NTD: Definition to tie to loss of investment grade credit rating.]

“Requirement of Law” means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

“Responsible Officer” means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; (c) a Successor Servicer, any authorized director or officer of the Successor Servicer; and (d) the Indenture Trustee, any officer of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer’s knowledge and familiarity with the particular subject);

“Servicer” means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

“Servicer CEA Receipts” has the meaning ascribed thereto in Section 3.4(e);

“Servicer Default” has the meaning ascribed thereto in Section 7.1;

“Specified Consumer” has the meaning ascribed to the term “specified consumer” in the Act;

“Specified Creditors” has the meaning ascribed thereto in the Indenture;

“Specified Portion” means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

“Successor Servicer” has the meaning ascribed thereto in Section [3.07(e)] of the Indenture;

“Supplemental Indenture” means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

“Termination Event” has the meaning ascribed thereto in Section ■;

“Termination Notice” has the meaning ascribed thereto in Section 7.1;

“Transfer” has the meaning ascribed to the term “transfer” in the Act, and **“Transferred”** has a corresponding meaning;

“Transfer Notice” means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(a) of this Agreement; and

“Transferor” means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings²

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

- (a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.
- (b) The term “**including**” means “including without limitation”, and other forms of the verb “**include**” have correlative meanings.
- (c) All references to any Person shall include such Person’s permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.
- (d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word “**from**” means “**from and including**” and each of the words “**to**” and “**until**” means “**to but excluding**”.
- (e) The words “**hereof**”, “**herein**” and “**hereunder**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.
- (f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.
- (g) The word “**will**” shall be construed to have the same meaning and effect as the word “**shall**”. The word “**or**” is not exclusive.

² Torts to conform boilerplate provisions, as applicable, across all transaction documents.

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset

- (a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the “**Purchase Price**”) which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the [5th] Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.
- (b) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor’s offer to Transfer the Specified Portion of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.
- (c) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.
- (d) Upon receipt by the Transferor of the payment referred to in Section 2.1(c), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the corresponding Issuer Investment Interest.
- (e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to

in Section 2.1(d), of a Specified Portion of the Regulatory Asset and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 **Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset**

- (a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer and the Indenture Trustee, of the following conditions:
 - (i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:
 - (A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and
 - (B) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**
- (b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:
 - (i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;
 - (ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

- (iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;
- (iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;
- (v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);
- (vi) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and
- (vii) after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3 ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a specified portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled to receive any further compensation from the Issuer for its services in connection therewith. The Servicer agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.

3.2 **Forecast of Electricity Consumption**

The IESO shall:

- (a) provide to the Board and the Financial Services Manager the forecasts of electricity consumption by Specified Consumers as contemplated by Section 8(3) of the Regulations; and
- (b) provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.

3.3 **ISO Deferral**

The IESO shall:

- (a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and
- (b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

3.4 **Clean Energy Adjustments and Electricity Vendors**

The Servicer shall:

- (a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the “**IESO Segregated Account**”) bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;
- (b) prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:
 - (i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;
 - (ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and

- (iii) establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; **[NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]**
- (c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;
- (d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;
- (e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the **“Servicer CEA Receipts”**);
- (f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within [two Business Days] of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.6;
- (g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;
- (h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;
- (i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);
- (j) make reasonable efforts to contact each Electricity Vendor that:
 - (i) does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

- (ii) does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,
- (iii) delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or
- (iv) does not certify that it has established the segregated account required by Section 10(2) of the Regulations,

and attempt to resolve the applicable issue;

- (k) on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■.
- (l) 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 this Section 3.6 without any surcharge, fee, offset, charge or other deduction.

3.5 **Reporting**

The Servicer shall:

- (a) on or before the **[8th Business Day]** following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a “**Monthly Report**”);
- (b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;
- (c) report to the Issuer any unresolved matters referred to in Section 3.4(j);
- (d) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer’s ability to perform its duties and obligations under this Agreement; and
- (e) upon the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the Issuer Investment Interest or the Regulatory Asset, to the extent it is reasonably available to the Servicer and as may be

reasonably necessary and permitted by law, to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder.

3.6 Remittances

- (a) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.
- (b) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Business Day.

3.7 Limits to Obligations

Without in any way limiting the duties and obligations of the Servicer arising under the Act or the Regulations, the parties hereto agree the duties and obligations of the Servicer under this Agreement are limited as provided in this Section 3.7.

- (a) The Servicer is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.
- (b) The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.
- (c) The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.
- (d) The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.

- (e) The Servicer is under no obligation to initiate or prosecute any legal action relating to the collection of the Issuer Investment Interest.

3.8 Servicing and Maintenance Standards

- (a) The Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance the Requirements of Law, including the Act and the Regulations and shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions. In furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with reasonable care and in material compliance with applicable Requirement of Laws, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar settlement activities on its own account.
- (b) The Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.
- (c) Neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.9 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.11.

3.10 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.11 Resignation of Servicer

The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.12 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.12 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.12, then, upon satisfaction of all of the other conditions of this Section 3.12, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.13 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.12, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be

confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.14 IESO Regulatory Obligation to Pay Carrying Costs

- (a) During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.
- (b) On or before the 4th Business Day of each calendar month, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a “**Monthly Carrying Costs Statement**”) setting out the amount of Carrying Costs in respect of the preceding calendar month (“**Monthly Carrying Costs**”).
- (c) On or before the 8th Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth in the applicable Monthly Carrying Costs Statement.

3.15 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to \$■, or such other form of security as may be acceptable to the Issuer and the Indenture Trustee, as security for any failure of Electricity Vendors, following [July 31, 2021], to remit the Electricity Vendor CEA Collections.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 4.3, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer and the Indenture Trustee will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

- (a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and

authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

- (b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.
- (c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.
- (d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).
- (e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.
- (f) No Proceedings. To the IESO's knowledge, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.

- (g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.
- (h) Information. At the date hereof and as of each applicable Closing Date, except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.
- (i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Assets as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.
- (j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.
- (k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.
- (l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).
- (m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:
 - (i) reasonably believes that it will be able to pay its debts as they come due; and
 - (ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.
- (n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of an Investment Interest to the Issuer and the pledge thereof to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

4.3 Limitations on Representations and Warranties

Notwithstanding anything in this Agreement to the contrary, the IESO makes no representation or warranty with respect to the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts be sufficient to satisfy the Issuer's Funding Obligations.

ARTICLE 5 COVENANTS OF THE IESO

5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) will keep in full force and effect its existence and remain validly existing under the laws of the Province of Ontario, and (b) will obtain and preserve its qualifications to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Agreement and each other instrument or agreement to which the IESO is a party necessary for the proper administration of this Agreement and the transactions contemplated hereby.

5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, and will defend the right, title and interest of the Issuer and of the Indenture Trustee, on behalf of the Specified Creditors, in, to and under the Issuer Investment Interest against all claims of third parties claiming through or under the Transferor.

5.3 Notice of Liens

The IESO shall notify the Issuer and the Indenture Trustee promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, the Investment Asset or Investment Interests, except to the extent that failure to so comply would not materially adversely affect the Issuer's or the Indenture Trustee's interests in the Issuer Investment Interest, the value of the Issuer Investment Interest, the timing or amount of Clean Energy Adjustments payable by Specified Consumers or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

- (a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.
- (b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.
- (c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).
- (d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portion of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the “**IESO Disclosure**”) as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents and represents that, except in respect information provided by a third party, all such information is, as at the respective dates of delivery to the Issuer, true and correct in all material respects, contains no misrepresentation and constitutes full, true and plain disclosure of all material facts relating to the IESO Disclosure.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 Access to Certain Records and Information Regarding Investment Interest

The IESO shall provide to the Issuer and the Indenture Trustee access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer and the Indenture Trustee to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

5.10 Maintenance of Operations

Subject to Section 3.12, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

ARTICLE 6 IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

- (a) The IESO shall indemnify the Issuer, the Indenture Trustee (for itself and for the benefit of the Specified Creditors), the Manager and each of their respective trustees, officers, directors, employees and agents (each, an “**Indemnified Party**”), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, “**Indemnified Losses**”) imposed on, incurred by or asserted against any such Person as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and (ii) the IESO’s breach of any of its representations or warranties under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO

suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO, or (iv) in the case of the Indenture Trustee, such action exposes the Indenture Trustee to a material risk of criminal liability or forfeiture or a Servicer Default has occurred and is continuing. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

- (b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.12) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.11 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.
- (c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.
- (d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

- (e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.
- (f) Except to the extent expressly provided in this Agreement (including the payment of the Purchase Price), the IESO hereby releases and discharges the Issuer and each of its trustees, officers, directors and agents (collectively, the “**Released Parties**”), from any and all actions, claims and demands whatsoever, whenever arising, which the IESO, in its capacity as Servicer or otherwise, shall or may have against any such Person relating to the Investment Interest or the IESO’s activities with respect thereto, other than any actions, claims and demands arising out of the willful misconduct, bad faith or gross negligence of the Released Parties.

ARTICLE 7

SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a “**Servicer Default**”) shall occur and be continuing:

- (a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;
- (b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;
- (c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture

Trustee) by the Issuer or the Indenture Trustee or (ii) such failure is discovered by a Responsible Officer of the Servicer;

- (d) an Insolvency Event occurs with respect to the Servicer or the IESO; or
- (e) any additional “Servicer Default” as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Indenture Trustee shall, upon the instruction of the Specified Creditors as provided for under the Trust Indenture, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (and to the Indenture Trustee if given by the Specified Creditors) (a “**Termination Notice**”), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), the Specified Creditors and the Indenture Trustee (or any of their representatives) shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Indenture Trustee is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the “**Records**”). The predecessor Servicer shall cooperate with the Successor Servicer, the Issuer and the Indenture Trustee in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO’s rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

- (a) Upon the Servicer’s receipt of a Termination Notice pursuant to Section 7.1 or the Servicer’s resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the

obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Indenture Trustee may, and at the written direction and with the consent of the Specified Creditors as provided for under the Trust Indenture shall, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer with the Issuer's prior written consent thereto (which consent shall not be unreasonably withheld), and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Indenture Trustee may, at the direction of Specified Creditors as provided for under the Trust Indenture, petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Indenture Trustee be liable for its appointment of a Successor Servicer. The Indenture Trustee's expenses incurred under this Section 7.2(a) shall be at the sole expense of the Issuer and payable from the Collection Account as provided in **[Section 8.02]** of the Indenture.

- (b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Indenture Trustee, with the written consent of Specified Creditors as provided for under the Trust Indenture, may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences, except a default in making any required deposits to the Collection Account in accordance with this Agreement. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, the Manager, the Indenture Trustee and the Rating Agencies promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8 MISCELLANEOUS

8.1 Amendment

This Agreement may be amended in writing by the IESO, the Issuer and the Indenture Trustee and with satisfaction of the Rating Agency Condition. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withholding from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer, the IESO or the Indenture Trustee will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

8.4 Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

- (a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

- (b) in the case of the Issuer or the Manager (on behalf of the Issuer):

[Financing Entity]

c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

- (c) in the case of the Indenture Trustee:

■

[Address]

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO, the Issuer and, to the extent provided herein or in the other Program Agreements, the Indenture Trustee (for its own benefit and for the benefit of the Specified Creditors) and the other Persons expressly referred to herein, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

8.11 Limitation of Liability of Indenture Trustee

It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Indenture Trustee, not individually or personally but solely as Indenture Trustee on behalf of the Specified Creditors, in the exercise of the powers and authority conferred and vested in it. The Indenture Trustee in acting hereunder is entitled to all rights, benefits, protections, immunities and indemnities accorded to it under the Indenture.

8.12 Limitation of Liability of the Issuer Trustee

- (a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

- (b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.
- (c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.13 Waivers

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof; provided, however, that no such waiver delivered by the Issuer shall be effective unless the Indenture Trustee has given its prior written consent thereto. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any

way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

[FINANCING ENTITY], by its Manager,
**ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor and Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

Signature Page to Master Transfer and Servicing Agreement

[INDENTURE TRUSTEE]
as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

Signature Page to Master Transfer and Servicing Agreement

EXHIBIT A
FORM OF TRANSFER NOTICE

See attached

E-A-1

TRANSFER NOTICE

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the “**Issuer**”), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, on a fully serviced basis, the Specified Portion of the Regulatory Asset set out below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor’s Transfer to the Issuer of the Specified Portion of the Regulatory Asset set out below, on a fully serviced basis, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date, (i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly; and (ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest.

Specified portion of Regulatory Asset: \$■

Purchase Price: \$■

Closing Date: ■

E-A-2

The Transferor hereby represents, warrants and confirms that:

- (i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;
- (ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and
- (iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor**

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
FORM OF MONTHLY REPORT

See Attached

E-B-1

MONTHLY REPORT

[NTD: Subject to continuing review by the Dealers and their counsel.]

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the “**Issuer**”), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and by **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ■ of the Master Transfer and Servicing Agreement the Servicer hereby certifies in respect of the Billing Period corresponding to the calendar month of ■, ■, as follows:

	Item	Amount
(A)	Servicer CEA Receipts:	\$■
(B)	Balance of Collection Account:	\$■

[NTD: Any additional information considered necessary for OPG/IESO to be included.]

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C
FORM OF MONTHLY CARRYING COSTS STATEMENT

See Attached

E-C-1

MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and [INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.14 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

	<u>Amount</u>
Funding costs:	\$■
Derivative payments to be made:	\$■
Amounts deposited into accounts other than capital accounts:	\$■
Financing entity expenses:	\$■
Tax liabilities:	\$■
	Subtotal: \$■
LESS:	
Amounts withdrawn from accounts other than capital accounts:	
Derivative payments to be received:	
Tax refunds:	\$■
	Subtotal: \$■
Monthly Carrying Costs	\$■

In accordance with Section 3.14(b) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

~~Acknowledged~~ = and ~~Accepted by~~

=

■
as Indenture Trustee

Dated as of ■, 2017

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Sections and Headings	8
1.3 Extended Meanings	8
ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET	9
2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset	9
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset	~~11~~ 10
ARTICLE 3 ROLE OF THE SERVICER	~~13~~ 11
3.1 Designation of Servicer	~~13~~ 11
3.2 ~~Duties of Servicer Generally~~	~~13~~ Forecast of Electricity Consumption 12
3.3 ~~Remittances~~	~~14~~ ISO Deferral 12
3.4 ~~[Funding Rebates]~~	~~15~~ Clean Energy Adjustments and Electricity Vendors 12
3.5 Reporting ~~Functions~~	~~16~~ 14
3.6 Remittances	15
3.7 Limits to Obligations	15
3.8 Servicing and Maintenance Standards	16
3.7 ~~Binding Effect of Servicing Obligations~~	~~16~~ 3.9 Appointm
3.10 Term	16
3.8 ~~Limitation on Liability~~ 3.11	Resignation of Servicer ~~and Others~~ 17
3.12 Mergers	17
3.93.13	The IESO Not to Resign as Servicer 17
3.15 IESO Security for CEA Remittances	18
3.10 ~~Appointments~~	~~18~~
3.11 ~~Effective Period and Termination~~	~~19~~
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO	~~19~~ 18
4.1 Representations and Warranties	~~19~~ 18
4.2 Survival	~~21~~ 20
4.3 Limitations on Representations and Warranties	~~22~~ 21
ARTICLE 5 COVENANTS OF THE IESO	~~22~~ 21
5.1 Existence	~~22~~ 21
5.2 No Transfer or Liens	~~22~~ 21
5.3 Notice of Liens	~~22~~ 21
5.4 Compliance with Law	~~22~~ 21
5.5 Covenants Related to the Investment Interest	~~23~~ 21
5.6 Non-petition Covenants	~~23~~ 22
5.7 Disclosure	~~24~~ 22
5.8 Further Assurances	~~24~~ 22

TABLE OF CONTENTS

(continued)

	Page
5.9 ~~Co-Owner Agreements~~	24
~~5.10~~ Access to Certain Records and Information Regarding Investment Interest	~~24~~ 23
~~5.11~~ 5.10 Maintenance of Operations	2423
ARTICLE 6 IESO INDEMNITIES	~~25~~23
6.1 Liability of the IESO; Indemnities	~~25~~ 23
ARTICLE 7 SERVICER DEFAULT	~~27~~25
7.1 Servicer Default	~~27~~ 25
7.2 Appointment of Successor Servicer	~~28~~ 26
7.3 Waiver of Past Defaults	~~29~~ 27
7.4 Notice of Servicer Default	~~29~~ 27
7.5 Cooperation with Successor Servicer	~~29~~ 28
ARTICLE 8 MISCELLANEOUS	~~30~~28
8.1 Amendment	~~30~~ 28
8.2 ~~Notices~~	~~30~~ <u>Withholding Rights</u> 28
8.3 ~~Assignment~~	~~31~~ <u>No Partnership</u> 28
8.4 <u>Notices</u>	28
~~8.5~~ <u>Assignment</u>	~~29~~
~~8.6~~ Limitations on Rights of Third Parties	~~31~~ 29
~~8.5~~ 8.7 Severability	~~31~~ 30
~~8.6~~ 8.8 Separate Counterparts; Electronic Delivery	~~31~~ 30
~~8.7~~ 8.9 Governing Law	~~32~~ 30
~~8.8~~ ~~Assignment~~ 8.10 <u>Grant of Security Interest</u> to Indenture Trustee	~~32~~ 30
~~8.9~~ ~~Limitation of Liability of Indenture Trustee~~	~~32~~
~~8.10~~ ~~Limitation of Liability of the Issuer Trustee~~	~~32~~
~~8.11~~ ~~Waivers~~	~~33~~ <u>Limitation of Liability of Indenture Trustee</u> 30
 8.12 ~~Indenture Trustee Actions~~	 ~~33~~
~~8.13~~ <u>Limitation of Liability of the</u> Issuer Trustee	~~34~~ 30
<u>8.13</u> <u>Waivers</u>	<u>31</u>

EXHIBIT

Exhibit A	–	Form of Transfer Notice
Exhibit B	–	Form of Monthly Report
Exhibit C	–	Form of Monthly ~~Funding Rebate~~ <u>Carrying Costs</u> Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario

(the “**Issuer**”)

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the “**Transferor**” in its capacity as transferor, the “**Servicer**”, in its capacity as servicer, and the “**IESO**” in its capacity as both Transferor and Servicer)

- ~~acknowledged~~ and ~~accepted by~~ -

[INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the “**Indenture Trustee**”)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the “**Act**”) for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the “**Regulatory Asset**”);

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer a ~~specified portion~~ Specified Portion of the Regulatory Asset to the Issuer on a fully-serviced

basis, and pursuant to Section 26(3) of the Act, such a Transfer ~~shall result~~ results in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the ~~specified portion~~ Specified Portion of the Regulatory Asset;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer desires to be so engaged;

AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors (as defined in the Indenture) and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

“**Act**” has the meaning ascribed thereto in the recitals;

~~“**Administrative Agent**” means OPG, in its capacity as administrative agent of the Issuer;~~

~~“**Administrative Services Agreement**” means the administrative services agreement dated ■, 2017 between the Administrative Agent and the Issuer concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Issuer;~~

~~“**Affiliate**” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the~~

~~ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing;~~

“**Agreement**” means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions “herein”, “hereof”, “hereto”, “hereunder” and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

“**Billing Period**” means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

“**Board**” means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, ~~or the office of the Indenture Trustee is,~~ authorized or obligated by law, regulation or executive order to be closed;

“**Carrying Costs**” has the meaning ascribed to the term “carrying costs” in the Regulations;

“**CEA Consumer Invoice Amounts**” means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

“**Clean Energy Adjustment**” has the meaning ascribed to the term “clean energy adjustment” in the Act;

“**Closing Date**” means the date on which a Transfer is completed as specified in the applicable Transfer Notice;

“**Co-Owner Agreement**” means any agreement between, *inter alia*, the ~~Issuer~~ parties hereto and any other owner or owners of an Investment Interest as contemplated by ~~subsection~~ Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

“**Co-Owner Implementation Date**” means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

“**Collection Account**” has the meaning ascribed thereto in Section [8.02(a)]¹ of the Indenture;

~~“**Corporate Trust Office**” means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at ■; Telephone: ■; Email: ■, or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice;~~

¹ All cross-references to the Indenture to be conformed to the final version of the Indenture.

“Daily Remittance Event” means ~~■ [NTD: Definition to be tied to the loss of investment grade ratings of the IESO]~~ the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

“Declaration of Trust” means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

~~“Electricity Act” means the Electricity Act, 1998, SO, 1998;~~

“Electricity Vendor” has the meaning ascribed to the term “electricity vendor” in the Act;

“Electricity Vendor CEA Collections” means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

“Electricity Vendor Billing Period Report” means a report as contemplated by Section 17(s) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing;

- (a) its total CEA Consumer Invoice Amounts in such Billing Period;
- (b) its total Electricity Vendor CEA Collections during such Billing Period; and
- (c) such other information as may be agreed to.

“Eligible Deposit Account” means an account in Canada with an Eligible Institution;

“Eligible Institution” means:

- (a) at any time before the Co-Owner Implementation Date, an “Eligible Institution” as defined in the Indenture; and
- (b) at any time on or after the Co-Owner Implementation Date, an “Eligible Institution” as defined in the applicable Co-Owner Agreement;

“Fair Hydro Variance Account” means the variance account established by the IESO pursuant to ~~subsection~~ Section 24(1) of the Act;

~~“Finance Reserve Deposit” has the meaning ascribed to the term “finance reserve deposit” in the Regulations;~~

“Financing Entity” has the meaning ascribed to the term “financing entity” in the Act;

~~“Financing Entity Expenses” has the meaning ascribed to the term “financing entity expense” in the Regulations;~~

~~“Funding Cost” has the meaning ascribed to the term “funding cost” in the Regulations;~~

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act;

~~["Funding Rebate" has the meaning ascribed thereto in Section 3.4(b);][NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]~~

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

“IESO” or “Independent Electricity System Operator” means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act*, 1998, S.O. 1998;

[NTD: The Issuer may at some point have to publicly file this Agreement, and a copy of it will be circulated to the rating agencies. Therefore, it seems prudent not to include IESO bank account details in the Agreement.]

~~“IESO Deferral”; at any time, means the amount determined by the IESO under subsection 23(1) of the Act and sections 15 and 16 of the Regulations and recorded by the IESO under subsection 24(1) of the Act in the Fair Hydro Variance Account at such time~~ has the meaning ascribed to the term “IESO deferral” in the Act;

“IESO Disclosure” has the meaning ascribed thereto in Section 5.7;

“IESO Segregated Account” has the meaning ascribed thereto in Section means the account established under Section ~~3.3~~3.4(a);

“Indemnified Losses” has the meaning ascribed thereto in Section 6.1(a);

“Indemnified Party” has the meaning ascribed thereto in Section 6.1(a);

“Indenture” means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

“Indenture Trustee” means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

“Insolvency Event” means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization,

moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within [45] days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

“**Investment Asset**” has the meaning ascribed to the term “investment asset” in the Act;

“**Investment Interest**” has the meaning ascribed to the term “investment interest” in the Act;

“**Issuer**” means ■, a trust formed under the laws of the Province of Ontario;

“**Issuer Funding Obligations**” means the Funding Obligations of the Issuer;

“**Issuer Investment Interest**” means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

“**Issuer Share**” means:

- (a) at any time before the Co-Owner Implementation Date, 100%; and
- (b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

“**Issuer Trustee**” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

“**Lien**” means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

“**Management Agreement**” means the management agreement dated ■, 2017 between the Manager and the Issuer;

“**Manager**” means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

“**Minister**” means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

“**Monthly ~~Funding Expenses~~ Carrying Costs**” has the meaning ascribed thereto in Section 3.43.14(ab);

“**Monthly ~~Funding-Rebate~~ Carrying Costs Statement**” has the meaning ascribed thereto in Section 3.43.14(ab);

“**Monthly Report**” has the meaning ascribed thereto in Section ~~3.3~~3.5(ea);

“**Officer’s Certificate**” means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section [10.01] of the Indenture, and delivered to the Indenture Trustee;

“**OPG**” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

“**Opinion of Counsel**” means one or more written opinions of counsel, ~~who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel,~~ which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

~~“**Outstanding Amount**” means the aggregate principal amount of all Funding Obligations outstanding at the date of determination;~~

“**Permitted Successor**” means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

“**Permitted Transfer**” means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

“**Person**” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

“**Proceeding**” means any suit in equity, action at law or other judicial or administrative proceeding;

~~“**Program Agreements**” means the Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Administrative Services Agreement, this Agreement, each Transfer Notice, any Co-Owner Agreements, the Provincial Protection and Assurances Agreement and any hedging agreements, credit enhancement agreements, loan agreements and underwriting or agency agreements in effect at such time and all other documents and certificates delivered in connection therewith;~~has the meaning ascribed thereto in the Indenture;

~~“**Provincial Protection and Assurances Agreement**” means the Provincial Protection and Assurances Agreement dated as of ■, 2017 between [Her Majesty the Queen in Right of Ontario, as represented by the Minister, the Indenture Trustee and the Issuer][NTD: Subject to finalization of agreement];~~

“**Purchase Price**” has the meaning ascribed thereto in Section 2.1(a);

2007/07/23/2007/07/23/

“**Rating Agency**” has the meaning ascribed thereto in the Indenture;

“**Rating Agency Condition**” has the meaning ascribed thereto in the Indenture;

“**Records**” has the meaning ascribed thereto in Section 7.1;

~~“**Reference Period**” has the meaning ascribed to the term “reference period” in the Act;~~

“**Regulations**” means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

“**Regulatory Asset**” has the meaning ascribed thereto in the recitals;

“**Released Parties**” has the meaning ascribed thereto in Section 6.1(e~~f~~);

“**Remittance Date**” means, in respect of each Billing Period, the [3rd]²~~Service~~ Business Day following the last day of each Billing Period;

“**Required Servicer Rating**” means ■; [NTD: Definition to tie to loss of investment grade credit rating.]

“**Requirement of Law**” means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

“**Responsible Officer**” means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; (c) a Successor Servicer, any authorized director or officer of the Successor Servicer; and (d) the Indenture Trustee, any officer ~~within the Corporate Trust Office~~ of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer’s knowledge and familiarity with the particular subject);

“**Servicer**” means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

~~“**Servicer Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed, on which the Servicer maintains normal office hours and conducts business;~~

“**Servicer CEA CollectionsReceipts**” has the meaning ascribed thereto in Section 3.2(a)(ii)~~3.4(e)~~;

²~~-Based on the monthly payment cycle charts prepared by OPG.~~

“**Servicer Default**” has the meaning ascribed thereto in Section 7.1;

“**Specified Consumer**” has the meaning ascribed to the term “specified consumer” in the Act;

“**Specified Creditors**” has the meaning ascribed thereto in the Indenture;

“**Specified Portion**” means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

“**Successor Servicer**” has the meaning ascribed thereto in Section [3.07(e)] of the Indenture;

“**Supplemental Indenture**” means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

~~“**Tax Liability**” has the meaning ascribed to the term “tax liability” in the Regulations;~~

~~“**Tax Refund**” has the meaning ascribed to the term “tax refund” in the Regulations;~~

“**Termination Event**” has the meaning ascribed thereto in Section 3.11■;

“**Termination Notice**” has the meaning ascribed thereto in Section 7.1;

“**Transfer**” has the meaning ascribed to the term “transfer” in the Act, and “**Transferred**” has a corresponding meaning;

“**Transfer Notice**” means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(a) of this Agreement; and

“**Transferor**” means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings³²■

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

- (a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration

³²■ Torts to conform boilerplate provisions, as applicable, across all transaction documents.

- means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.
- (b) The term “**including**” means “including without limitation”, and other forms of the verb “**include**” have correlative meanings.
 - (c) All references to any Person shall include such Person’s permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.
 - (d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word “**from**” means “**from and including**” and each of the words “**to**” and “**until**” means “**to but excluding**”.
 - (e) The words “**hereof**”, “**herein**” and “**hereunder**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.
 - (f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.
 - (g) The word “**will**” shall be construed to have the same meaning and effect as the word “**shall**”. The word “**or**” is not exclusive.

ARTICLE 2

TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 **Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset**

- (a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of ~~each~~any calendar month, ~~provide offer~~ to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the ~~specified~~

~~portion~~Specified Portion of the Regulatory Asset that the Transferor ~~desires is offering~~ to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the “Purchase Price”) which shall be equal to the amount of ~~the specified portion~~such Specified Portion of the Regulatory Asset ~~that the Transferor proposes to Transfer to the Issuer~~, (iii) the Closing Date to effect such transfer which shall be no earlier than the 10th Business Day following after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other ~~date~~Business Day as may be agreed ~~upon~~ by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

- (b) ~~{The Issuer shall use commercially reasonable efforts to provide reasonable notice to the Transferor if the Issuer has reasonable cause to believe that it will not accept a Transfer Notice sent by the Transferor or that the conditions precedent in Sections 2.2(b)(i), (v), (vi), (vii), (viii) and (vii) will not be satisfied on the relevant Closing Date.}[NTD: Subject to review by OPG.]~~
- (b) ~~(e)~~ On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor’s offer to Transfer the ~~portion~~Specified Portion of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the ~~specified portion~~Specified Portion of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.
- (d) ~~In consideration and as an inducement for the Issuer to acquire the Investment Interest at the Purchase Price, the Transferor shall, concurrently with each such Transfer and in accordance with Section 3.4, agree to pay to the Issuer all Monthly Funding Expenses that are incurred by or on behalf of the Issuer in connection with each applicable Transfer in respect of each calendar month in which there are no Clean Energy Adjustments billed to Specified Consumers.~~
- (c) ~~(e)~~ Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.
- (d) ~~(f)~~ Upon receipt by the Transferor of the payment referred to in Section 2.1(c), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an

amount equal to the Purchase Price received and shall retain no further right, title or interest in the corresponding Issuer Investment Interest.

- ~~(i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price and, as a consequence, the Regulatory Asset shall be adjusted accordingly; and~~
- ~~(ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and in accordance with section 27(1) of the Act, shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer.~~
- ~~(g) Any Transfer of a specified portion of the Regulatory Asset by the Transferor pursuant to this Agreement shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer, shall be treated as a true sale and not as a pledge of or secured transaction relating to the Transferor's right, title, and interest in, to, and under the specified portion of the Regulatory Asset. After giving effect to a Transfer contemplated hereby, the Transferor shall have no right, title or interest in, to or under the corresponding Investment Interest because (i) it has Transferred all of its right, title and interest in and to the corresponding specified portion of the Regulatory Asset to the Issuer, (ii) as provided in the Act, all right, title and interest to the corresponding Investment Interest shall be vested in the Issuer, (iii) as provided in the Act, such Transfer is perfected, vested, valid and binding as against the Transferor and all other Persons who may have claims of any kind against the Transferor, regardless of whether the Persons who have claims have received notice of the Transfer, and (iv) the property rights and interests acquired by the Issuer shall be free and clear of any Liens arising through the IESO.~~
- (e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(d), of a Specified Portion of the Regulatory Asset and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

- (a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a ~~specified portion~~Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer and the Indenture Trustee, of the following ~~condition~~conditions:

- (i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:
 - (A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the ~~Program Agreements to which~~ performance by the IESO ~~is party of~~ its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement ~~or any of the Program Agreements to which the IESO is party and authorized to give notices and instructions hereunder (which can be changed by notice hereunder)~~; and
 - (B) ~~reports showing the results of searches conducted against the IESO under applicable personal property security registers in the Province of Ontario together with executed copies of all discharges or releases of prior security interests relating to the Regulatory Asset subject to the Transfer; provided that the IESO may establish that any particular registration does not affect the Regulatory Asset by delivering a letter or acknowledgment signed by the applicable secured party; the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]~~
- (b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a ~~specified portion~~ Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:
 - (i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;
 - (ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor ~~is not insolvent and will not have been made insolvent by such Transfer and the Transferor~~ is not aware of any pending ~~insolvency~~ Insolvency Event with respect to itself;

- (iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred ~~and not been waived~~be continuing, and (C) no Servicer Default shall have occurred and ~~not been waived~~be continuing;
- (iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the ~~specified portion~~Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;
- (v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);
- ~~(vi) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel];~~
- (vi) ~~(vii)~~ as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and
- (vii) ~~(viii)~~ after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3 ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a specified portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be ~~fully~~ serviced by the Servicer in

accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled to receive any further compensation from the Issuer ~~or the Indenture Trustee~~ for its services in connection therewith. The Servicer ~~acknowledges the responsibility of the Servicer for servicing the related Issuer Investment Interest corresponding to the specified portion of the Regulatory Asset Transferred by the Transferor under this Agreement and hereby agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.~~

3.2 ~~Duties of Servicer Generally~~Forecast of Electricity Consumption

(a) ~~The Servicer shall:-~~

- ~~(i) issue settlement statements to Electricity Vendors that include amounts in respect of the Clean Energy Adjustment as prescribed by the Act and the Regulations;~~
- ~~(ii) receive from Electricity Vendors amounts in respect of Electricity Vendor CEA Collections including payments made directly to the IESO as an Electricity Vendor (such amounts received being “Servicer CEA Collections”);~~
- ~~(iii) hold and remit Servicer CEA Collections in accordance with Section 3.3;~~
- ~~(iv) receive information from Electricity Vendors in respect of CEA Consumer Invoice Amounts and Electricity Vendor CEA Collections and such other information as the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required;~~
- ~~(v) determine and record the IESO Deferral for each month and make any necessary corrections thereto in accordance with the Act and the Regulations;~~
- ~~(vi) forecast electricity demand by Specified Consumers for Reference Periods;~~

The IESO shall:

- ~~(a) (vii) provide information to the Board in respect of forecast electricity demand or any other information the Board may require from the Servicer to facilitate the Board’s determination of the rates at which~~and the Financial Services Manager the forecasts of electricity consumption by Specified Consumers ~~are to be invoiced so as to enable full recovery of the Clean Energy Adjustment in respect of any Reference Period; as contemplated by Section 8(3) of the Regulations; and~~
- ~~(viii) respond to inquiries by Electricity Vendors, the Board or any other Governmental Authority with respect to the Clean Energy Adjustment;~~

- ~~(ix) investigate and handle delinquencies by Electricity Vendors regarding Servicer CEA Collections (and furnish reports with respect to such delinquencies to the Issuer);~~
 - ~~(x) process and deposit Servicer CEA Collections and make periodic remittances to the Issuer in accordance with Section 3.3;~~
 - ~~(xi) furnish periodic and current reports to the Issuer, the Board, the Indenture Trustee and the Rating Agencies, as may reasonably be required by the Issuer;~~
 - ~~(xii) take all necessary action in connection with Funding Rebates as set forth herein and in the Regulations; and~~
 - ~~(xiii) perform such other duties as may be reasonably required from time to time to be performed by it.~~
- (b) ~~Without limiting the generality of Section 3.2(a), in furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with, the duties and responsibilities relating to data acquisition, consumption and settlement statement calculation, settlement, collections, posting, payment processing and remittance with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar assets for its own account and, if applicable, for others.~~ provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.
- (c) ~~Notwithstanding anything to the contrary in this Agreement, the duties of the Servicer set forth in this Agreement shall be qualified and limited in their entirety by the Act, the Regulations, all applicable laws and the rules and regulations promulgated thereunder as in effect at the time such duties are to be performed.~~

3.3

Remittances ISO Deferral

- (a) The IESO shall:
- (a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and
 - (b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

3.4

Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

- (a) prior to receiving Servicer ~~shall~~ CEA Receipts, establish an Eligible Deposit Account (the “IESO Segregated Account”) bearing a designation ~~clearly~~ indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. ~~Interests~~ If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account-;
- (b) prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:

 - (i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;
 - (ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and
 - (iii) establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; [NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]
- (c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;
- (d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;
- (e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the “Servicer CEA Receipts”);

- (f) ~~(b) The Servicer shall~~ deposit ~~all the~~ Servicer CEA ~~Collections~~Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within ~~two Servicer Business Days~~ of receipt by the Servicer and ~~the Issuer Share of~~ such Servicer CEA ~~Collections~~Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section ~~3.3(d)~~3.6;
- (g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;
- (h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;
- (i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);
- (j) make reasonable efforts to contact each Electricity Vendor that:
- (i) does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;
 - (ii) does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,
 - (iii) delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or
 - (iv) does not certify that it has established the segregated account required by Section 10(2) of the Regulations,
- and attempt to resolve the applicable issue;
- (k) on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■,
- (l) ~~(e) The IESO agrees and acknowledges that it holds all~~ hold the Issuer Share of Servicer CEA ~~Collections~~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, ~~any other owner of Investment Interests, the Indenture Trustee and the Specified Creditors and that all such amounts will be remitted by the Servicer and~~ remit such amounts in accordance with this Section ~~3.3~~3.6 without any surcharge, fee, offset, charge or other deduction.

3.5 Reporting

The IESO ~~further agrees not to make any claim to reduce its obligation to remit all Servicer CEA Collections received by it in accordance with this Agreement.~~ Servicer shall:

- (d) ~~Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Collections received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period. Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Collections on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Servicer Business Day.~~
- (a) ~~(e) On or before the [2nd] Servicer Business Day following the end of each Billing Period, the Servicer shall prepare and deliver to the Issuer, the Indenture Trustee and the Rating Agencies a written report substantially in the form of Exhibit B (a "Monthly Report");~~

3.4 [Funding Rebates]

~~[NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]~~

- (b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;
- (c) ~~(a) On or before the [4th] Servicer Business Day following the end of each calendar month in which no Clean Energy Adjustment is billed to Specified Consumers, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "Monthly Funding Rebate Statement") setting out the aggregate amount of all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Financing Entity Expenses, and (iv) Tax Liabilities (net of Tax Refunds), that were incurred by or on behalf of the Issuer during the previous calendar month ("Monthly Funding Expenses").~~ report to the Issuer any unresolved matters referred to in Section 3.4(j);
- (b) ~~On or before the [10th] Servicer Business Day following receipt by the IESO of the Monthly Funding Rebate Statement, the IESO shall, as required by the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer in~~

~~immediately available funds, an amount in Canadian dollars equal to the Monthly Funding Expenses set forth in the applicable Monthly Funding Rebate Statement (the “Funding Rebate”).~~

3.5 Reporting Functions

- ~~(d) (a) Notification of Laws and Regulations. The Servicer shall~~ promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer’s ability to perform its duties and obligations under this Agreement; and
- ~~(e) (b) Other Information. Upon~~upon the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, ~~the Servicer shall~~ provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the Issuer Investment Interest or the Regulatory Asset, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder. ~~In addition, the Servicer shall provide the Issuer and the Indenture Trustee, within a reasonable time after written request therefor, any information available to the Servicer or reasonably obtainable by it that is necessary to calculate the Clean Energy Adjustment.~~

3.6 Remittances

- (a) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.
- (b) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Business Day.

3.7 Limits to Obligations

Without in any way limiting the duties and obligations of the Servicer arising under the Act or the Regulations, the parties hereto agree the duties and obligations of the Servicer under this Agreement are limited as provided in this Section 3.7.

- (a) The Servicer is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

- (b) The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.
- (c) The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.
- (d) The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.
- (e) The Servicer is under no obligation to initiate or prosecute any legal action relating to the collection of the Issuer Investment Interest.

3.8

3.6 Servicing and Maintenance Standards

- (a) ~~The Servicer shall monitor payments and impose collection policies on Electricity Vendors with respect to Electricity Vendor CEA Collections. On behalf of the Issuer, the Servicer shall: (a) manage, service, administer, collect and receive Servicer CEA Collections with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to the collection of other amounts from Electricity Vendors for its own account and, if applicable, for others; (b) follow standards, policies and procedures in performing its duties as Servicer that are customary for an electricity market operator and administrator that regularly performs settlement functions; (c) use all reasonable efforts, consistent with its customary servicing procedures, to receive and hold Servicer CEA Collections in trust for the benefit of the Issuer; (d) comply with each Requirement of Law, including all regulations and guidelines, applicable to and binding on it relating to its duties hereunder; and (e) provide all information to the Board as required by the Act and the Regulations. The Servicer shall follow such customary and usual practices and procedures as it shall deem necessary or advisable in its servicing of all or any portion of the Investment Asset and the Issuer Investment Interest, which may include, at the direction of the Issuer, the taking of legal action, at the Issuer's expense but subject to the priority~~

of payments set forth in ~~[Section 8.02(e)]~~ of the Indenture. In no event shall the Issuer Investment Interest be set off at any time by the IESO or any Permitted Successor thereof in connection with any default by such Person or otherwise. discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance the Requirements of Law, including the Act and the Regulations and shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions. In furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with reasonable care and in material compliance with applicable Requirement of Laws, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar settlement activities on its own account.

3.7 Binding Effect of Servicing Obligations

- (b) The Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.
- (c) Neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.9 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.11.

3.10 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "Termination

Event”). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.11 Resignation of Servicer

The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.12 Mergers

~~The obligations to continue to provide services and to receive and account for Servicer CEA Collections and related amounts will be binding upon the Servicer and any Permitted Successor so long as the Servicer CEA Collections have not been fully received and posted.~~ Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer’s Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section ~~3.73.12~~ and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section ~~3.73.12~~, then, upon satisfaction of all of the other conditions of this Section ~~3.73.12~~, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.8 Limitation on Liability of Servicer and Others

- (a) ~~Except as otherwise provided under this Agreement, including Section 6.1, neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that would otherwise be imposed by reason of negligence, recklessness or willful misconduct in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person, respecting any matters arising under this Agreement.~~
- (b) ~~Except as provided in this Agreement, the Servicer shall not be under any obligation to appear in, prosecute or defend any legal action relating to the Issuer Investment Interest that is not directly related to one of the Servicer's enumerated duties in this Agreement or related to its obligation to pay indemnification, and that in its reasonable opinion may cause it to incur any expense or liability; provided, however, that the Servicer will, at the direction of the Issuer, in respect of any Proceeding, undertake any action that is not specifically identified in this Agreement as a duty of the Servicer but that the Issuer reasonably determines is necessary or desirable in order to protect the rights and duties of the Issuer or the Indenture Trustee under this Agreement and the interests of Specified Creditors under the Indenture.~~

3.13 ~~3.9~~ The IESO Not to Resign as Servicer

Subject to the provisions of Section ~~3.7~~**3.12**, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.10 Appointments

3.14 IESO Regulatory Obligation to Pay Carrying Costs

- (a) ~~Subject to Section 3.10(b), the Servicer may at any time appoint any Person to perform all or any portion of its obligations as Servicer hereunder; provided, however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided, further, that the Servicer shall remain obligated and be liable under this Agreement for the servicing and administering of the Issuer Investment Interest in accordance with the provisions hereof without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Investment Interest. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and none of the Issuer, the Indenture Trustee, Specified Creditors or any other Person shall have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.9.~~ During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.
- (b) ~~The following matters shall be performed by the Electricity Vendors in accordance with the Act and shall not be considered an "appointment" for purposes of Section 3.10(a): (i) invoicing Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) collection from Specified Consumers of payments in respect of such invoices and remittance of such payments to the Servicer; and (iii) reporting to the Servicer the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and such other information the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required. The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations or in respect of the matters set out in this Section 3.10(b).~~ On or before the 4th Business Day of each calendar month, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "Monthly Carrying Costs Statement") setting out the amount of Carrying Costs in respect of the preceding calendar month ("Monthly Carrying Costs").

3.11 Effective Period and Termination

- (c) On or before the 8th Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth in the applicable Monthly Carrying Costs Statement.

3.15 IESO Security for CEA Remittances

~~The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "Termination Event"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.~~ If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to \$■, or such other form of security as may be acceptable to the Issuer and the Indenture Trustee, as security for any failure of Electricity Vendors, following [July 31, 2021], to remit the Electricity Vendor CEA Collections.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 4.3, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer and the Indenture Trustee will rely thereon in paying the Purchase Price related to Transfers of ~~specified portions~~ Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

- (a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, ~~and to execute, deliver and carry out the terms of this Agreement, including, for greater certainty, acting as Servicer in accordance with this Agreement.~~
- (b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset, or the servicing of related Investment Interests, ~~the Issuer or the repayment when due of the Funding Obligations.~~

- (c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer ~~specified portions~~ Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.
- (d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).
- (e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.
- (f) No Proceedings. ~~There are no Proceedings or, to~~ To the IESO's knowledge, ~~investigations~~ there are no Proceedings pending or ~~Proceedings~~ threatened, ~~before any Governmental Authority having jurisdiction over~~ against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.
- (g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

- (h) ~~Information.~~ ~~(i)~~ At the date hereof and as of each applicable Closing Date, except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.
- ~~(ii) Each report and certificate delivered in connection with any filing made or information provided to the Board by the IESO in connection with the Act, including on behalf of the Issuer with respect to Clean Energy Adjustments, will constitute a representation and warranty by the IESO that each such report or certificate, as the case may be, is true and correct in all material respects; provided, however, that, to the extent any such report or certificate is based in part upon or contains assumptions, forecasts or other predictions of future events, the representation and warranty of the IESO with respect thereto will be limited to the representation and warranty that such assumptions, forecasts or other predictions of future events are reasonable based upon historical performance (and facts known to the IESO on the date such report or certificate is delivered).~~
- (i) ~~The Transfer.~~ On After the completion of the Transfer on the applicable Closing Date, ~~the specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice shall be validly Transferred to the Issuer and the~~ IESO will have no right, title or interest in the ~~related~~ Investment Interest related to the Specified Portion of the Regulatory Assets as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.
- (j) ~~No Transfer.~~ Except ~~pursuant to any Co-Owner Agreement, no portion of for~~ Permitted Transfers, the ~~Regulatory Asset~~ IESO has ~~been~~ not sold, transferred, assigned, ~~or otherwise conveyed any interest in the Regulatory Asset to any Person.~~
- ~~(k) Liens. IESO has not~~ pledged or otherwise ~~conveyed by the IESO~~ granted a Lien to any Person ~~other than the Issuer or the Indenture Trustee, and, in the Regulatory Asset and~~ to the IESO's knowledge (after due inquiry), ~~no security agreement, there is no registered~~ financing statement ~~or equivalent security or lien instrument listing the IESO as debtor covering all or a portion of the Regulatory Asset (or the corresponding Investment Interest upon the Transfer thereof) is on file or of record in any jurisdiction, except such as may have been filed or recorded in favour of the Issuer or the Indenture Trustee in connection with the Program Agreements.~~ ~~(k) Title. The IESO is the sole owner of the specified portion of the Regulatory Asset that is to be Transferred to the Issuer on~~

~~the applicable Closing Date, free and clear of all Liens~~ or extending to the Regulatory Asset.

- (l) Tax Liens. ~~After due inquiry, the~~ The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the Income Tax Act (Canada).
- (m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:
- ~~(i) is solvent and expects to remain solvent;~~
 - (i) ~~(ii)~~ reasonably believes that it will be able to pay its debts as they come due; and
 - (ii) ~~(iii)~~ is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.
- (n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of an Investment Interest to the Issuer and the pledge thereof to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

4.3 Limitations on Representations and Warranties

Notwithstanding anything in this Agreement to the contrary, the IESO makes no representation or warranty with respect to the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer's Share of Servicer CEA ~~Collections will~~ Receipts be sufficient to satisfy ~~in full~~ the Issuer's Funding Obligations.

ARTICLE 5 COVENANTS OF THE IESO

5.1 Existence

~~Subject to Section 3.9, so~~ So long as any Issuer Funding Obligations are outstanding, the IESO (a) will keep in full force and effect its existence and remain validly

existing under the laws of the Province of Ontario, and (b) will obtain and preserve its qualifications to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Agreement and each other instrument or agreement to which the IESO is a party necessary for the proper administration of this Agreement and the transactions contemplated hereby.

5.2 No ~~Transfer or~~ Liens

Except for ~~(a) the Transfers under this Agreement to the Issuer or any Lien for the benefit of the Specified Creditors or the Indenture Trustee, and (b) following the Co-Owner Implementation Date, Transfers to other Financing Entities who enter into a Co-Owner Agreement with the Issuer and Liens granted in connection therewith to Persons advancing Funding Obligations to such other Financing Entities, the IESO will not sell, pledge, assign or transfer to any other Person, or~~ Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on, ~~any portion of~~ the Regulatory Asset, ~~whether existing as of the applicable Closing Date or thereafter created, or any interest therein or any portion thereof.~~ The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, and will defend the right, title and interest of the Issuer and of the Indenture Trustee, on behalf of the Specified Creditors, in, to and under the Issuer Investment Interest against all claims of third parties claiming through or under the Transferor.

5.3 Notice of Liens

The IESO shall notify the Issuer and the Indenture Trustee promptly after becoming aware of any Lien on any portion of the Regulatory Asset, ~~other than the Transfers hereunder and any Lien pursuant to the Program Agreements.~~

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, the Investment Asset or Investment Interests, except to the extent that failure to so comply would not materially adversely affect the Issuer's, or the Indenture Trustee's ~~or the Specified Creditors'~~ interests in the Issuer Investment Interest ~~under any of the Program Agreements~~, the value of the Issuer Investment Interest, the timing or amount of Clean Energy Adjustments payable by Specified Consumers or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

- (a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.
- (b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations ~~other than Funding Rebates.~~
- (c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).
- ~~(d) The IESO agrees that upon completion of a Transfer, the IESO shall reduce the balance in the Fair Hydro Variance Account by the Purchase Price and will adjust the Regulatory Asset accordingly.~~
- (d) ~~(e)~~ (i) ~~in~~ In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the ~~specified portion~~ Specified Portion of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement, ~~and (iv) the IESO shall not sell any portion of the Regulatory Asset pursuant to the Act to any other Person unless a Co-Owner Agreement has been entered into and the Rating Agency Condition has been satisfied with respect thereto.~~

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide ~~all~~ such non-confidential information regarding ~~the~~ IESO, the ~~IESO Deferral, the~~ Regulatory Asset ~~or~~ and the services provided by the Servicer hereunder (collectively, the "IESO Disclosure") as may be reasonably requested by the Issuer for

inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents and represents that, except in respect information provided by a third party, all such information is, as at the respective dates of delivery to the Issuer, true and correct in all material respects, contains no misrepresentation and constitutes full, true and plain disclosure of all material facts relating to the IESO Disclosure.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 ~~Co-Owner Agreements~~

~~The IESO shall not continue as or become a party to any purchase and sale agreement or similar arrangement (other than this Agreement) under which it sells all or any portion of the Regulatory Asset unless (i) the Rating Agency Condition shall have been satisfied, (ii) the Indenture Trustee, the Transferor and the other parties to such additional arrangement shall have entered into a Co-Owner Agreement in connection therewith, and (iii) the terms of the documentation evidencing such purchase and sale arrangement or similar arrangement shall expressly exclude the Issuer Investment Interest (including the Issuer Share of any Servicer CEA Collections) from any receivables, rights or other assets pledged or sold under such arrangement and unless the purchaser under such arrangement is a Financing Entity.~~

5.9 ~~5.10~~ Access to Certain Records and Information Regarding Investment Interest

The IESO shall provide to the Issuer and the Indenture Trustee access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA ~~Collections~~Receipts, as is reasonably required for the Issuer and the Indenture Trustee to confirm compliance by the IESO with its obligations under this Agreement ~~and any other Program Agreements to which the IESO is a party~~. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section ~~5.10~~5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section ~~5.10~~5.9.

5.10 ~~5.11~~ Maintenance of Operations

Subject to Section ~~3.73~~12, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario ~~in order to provide service~~ so long as it is acting as the Servicer under this Agreement.

ARTICLE 6 IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

- (a) The IESO shall indemnify the Issuer, the Indenture Trustee (for itself and for the benefit of the Specified Creditors), the Manager, ~~the Administrative Agent~~ and each of their respective trustees, officers, directors, employees and agents (each, an “**Indemnified Party**”), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, “**Indemnified Losses**”) imposed on, incurred by or asserted against any such Person as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and (ii) the IESO’s breach of any of its representations or warranties under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and ~~(iii) any litigation and related expenses relating to the IESO’s status and obligations as Servicer (other than any Proceeding the IESO is required to institute under this Agreement)~~, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice ~~(or, in the case of the Indenture Trustee, receipt of notice by a Responsible Officer only)~~ of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO’s election to assume the defence of any Proceeding or investigation, the Indemnified Party

shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, (iii) the IESO ~~shall authorize~~authorizes the Indemnified Party to employ separate counsel at the expense of the IESO, or (iv) in the case of the Indenture Trustee, such action exposes the Indenture Trustee to a material risk of criminal liability or forfeiture or a Servicer Default has occurred and is continuing. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

- (b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section ~~3.7~~3.12) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.11 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.
- (c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.
- (d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO. ~~Other than provided in the preceding sentence, the~~
- (e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

- (f) ~~(e)~~ Except to the extent expressly provided in this Agreement (including the payment of the Purchase Price), the IESO hereby releases and discharges the Issuer ~~and the Indenture Trustee~~, and each of ~~their respective~~ its trustees, officers, directors and agents (collectively, the “**Released Parties**”), from any and all actions, claims and demands whatsoever, whenever arising, which the IESO, in its capacity as Servicer or otherwise, shall or may have against any such Person relating to the Investment Interest or the IESO’s activities with respect thereto, other than any actions, claims and demands arising out of the willful misconduct, bad faith or gross negligence of the Released Parties.

ARTICLE 7

SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a “**Servicer Default**”) shall occur and be continuing:

- (a) any failure by the Servicer to remit to the Collection Account ~~on behalf of the Issuer~~ any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer ~~(with a copy to the Indenture Trustee)~~ or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;
- (b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer ~~(with a copy to the Indenture Trustee)~~ or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;
- (c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the

same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture Trustee) by the Issuer or the Indenture Trustee or (ii) such failure is discovered by a Responsible Officer of the Servicer;

- (d) an Insolvency Event occurs with respect to the Servicer or the IESO; or
- (e) any additional “Servicer Default” as specified in any Co-Owner Agreement occurs; ~~or~~
- (f) ~~the termination or withdrawal of the “Servicing Guarantee” under the Provincial Protection and Assurances Agreement. [NTD: Subject to finalization of the Provincial Protection and Assurances Agreement.]~~

then, and in each and every case, the Indenture Trustee shall, upon the instruction of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer’s Funding Obligations~~ as provided for under the Trust Indenture, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (and to the Indenture Trustee if given by the Specified Creditors) (a “**Termination Notice**”), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), the Specified Creditors and the Indenture Trustee (or any of their representatives) shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the ~~Investment Interest~~ Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Indenture Trustee is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, ~~the IESO Deferral~~, the Fair Hydro Variance Account and related documents or records, or otherwise (the “**Records**”). The predecessor Servicer shall cooperate with the Successor Servicer, the Issuer and the Indenture Trustee in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall

not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

- (a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Indenture Trustee may, and at the written direction and with the consent of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture shall, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer with the Issuer's prior written consent thereto (which consent shall not be unreasonably withheld), and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Indenture Trustee may, at the direction of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture, petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Indenture Trustee be liable for its appointment of a Successor Servicer. The Indenture Trustee's expenses incurred under this Section 7.2(a) shall be at the sole expense of the Issuer and payable from the Collection Account as provided in [Section 8.02] of the Indenture.
- (b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Indenture Trustee, with the written consent of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture, may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences, except a default in making any required deposits to the Collection Account in accordance with this Agreement. Upon any such waiver of a past

default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, the Manager, the Indenture Trustee and the Rating Agencies promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8 MISCELLANEOUS

8.1 Amendment

(a) This Agreement may be amended in writing by the IESO ~~and~~, the Issuer ~~with (i) the prior written consent of~~ and the Indenture Trustee, ~~and (ii) the~~ and with satisfaction of the Rating Agency Condition. Promptly after the execution of any such amendment ~~or consent~~, the Issuer shall furnish copies of such amendment ~~or consent~~ to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withholding from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer, the IESO or the Indenture Trustee will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

- ~~(b) Prior to the execution of any amendment to this Agreement, the Issuer and the Indenture Trustee shall be entitled to receive and rely upon an Opinion of Counsel, which counsel may be an employee of or counsel to the Issuer or the IESO and which shall be reasonably satisfactory to the Indenture Trustee, or, in the Indenture Trustee's sole judgment, external counsel of the IESO stating that the execution of such amendment is authorized and permitted by this Agreement and that all conditions precedent provided for in this Agreement relating to such amendment have been complied with. The Issuer and the Indenture Trustee may, but shall not be obligated to, enter into any such amendment that affects their own rights, duties, indemnities or immunities under this Agreement or otherwise.~~

8.4 ~~8.2~~ Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

- (a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
~~[Address]~~ 120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: ■ Chief Financial Officer, General Counsel and Associate
General Counsel

Email: ■

- (b) in the case of the Issuer or the Manager (on behalf of the Issuer):

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■

Email: ■

(c) in the case of the Indenture Trustee:

■

[Address]

Attention: ■

Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 ~~8.3~~ Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 ~~8.4~~ Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO, the Issuer and, to the extent provided herein or in the other Program Agreements, the Indenture Trustee (for its own benefit and for the benefit of the Specified Creditors) and the other Persons expressly referred to herein, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 ~~8.5~~ Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 ~~8.6~~ Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 ~~8.7~~ Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 ~~8.8 Assignment~~ Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to ~~any mortgage, pledge, assignment and~~ the grant of a ~~security interest~~ Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors ~~of~~ against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors. ~~In no event shall the Indenture Trustee have any liability for the representations, warranties, covenants, agreements or other obligations of the Issuer hereunder or in any of the certificates delivered pursuant hereto, as to all of which any recourse shall be had solely to the assets of the Issuer subject to the availability of funds therefor under Section [8.02] of the Indenture.~~

8.11 ~~8.9~~ Limitation of Liability of Indenture Trustee

It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Indenture Trustee, not individually or personally but solely as Indenture Trustee on behalf of the Specified Creditors, in the exercise of the powers and authority conferred and vested in it. The Indenture Trustee in acting hereunder is entitled to all rights, benefits, protections, immunities and indemnities accorded to it under the Indenture.

8.12 ~~8.10~~ Limitation of Liability of the Issuer Trustee

- (a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.
- (b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's

activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.10~~8.12, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

- (c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.13

~~8.11~~ **Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof; provided, however, that no such waiver delivered by the Issuer shall be effective unless the Indenture Trustee has given its prior written consent thereto. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor

in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

8.12 Indenture Trustee Actions

~~In acting hereunder, the Indenture Trustee shall have the rights, protections and immunities granted to it under the Indenture.~~

8.13 Issuer Trustee

~~In acting hereunder, the Issuer Trustee shall have the rights, protections and immunities granted to it under the Declaration of Trust.~~

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

[FINANCING ENTITY], by its Manager,
**ONTARIO POWER GENERATION
INC.**

By:
Name:
Title:

By:
Name:
Title:

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor and Servicer**

By:
Name:
Title:

By:
Name:
Title:

Signature Page to Master Transfer and Servicing Agreement

ACKNOWLEDGED AND ACCEPTED:

**[INDENTURE TRUSTEE]
as Indenture Trustee**

By:

Name:

Title:

By:

Name:

Title:

Signature Page to Master Transfer and Servicing Agreement

EXHIBIT A
FORM OF TRANSFER NOTICE

See attached

E-A- 1

TRANSFER NOTICE

TO: [FINANCING ENTITY]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and the INDEPENDENT ELECTRICITY SYSTEM OPERATOR (“Transferor”~~ in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by [INDENTURE TRUSTEE]~~, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its ~~desire~~offer to transfer to the Issuer on the Closing Date set out below, on a fully serviced basis, the ~~specified portion~~Specified Portion of the Regulatory Asset set out below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor’s Transfer to the Issuer of the ~~specified portion~~Specified Portion of the Regulatory Asset set out below, on a fully serviced basis, ~~{and (ii) the Transferor’s agreement to pay to the Issuer all (a) Funding Costs, (b) Finance Reserve Deposits, (c) Financing Entity Expenses, and (d) Tax Liabilities (net of Tax Refunds) that are incurred by the Issuer in connection with such Transfer,}~~⁴ the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date, (i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price,³ and the Regulatory Asset shall be adjusted accordingly; and (ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any

⁴ ~~Funding Rebate language to be included in Transfer Notice only when Clean Energy Adjustment is not being charged.~~

adverse claim, and shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest.

Specified portion of Regulatory Asset: \$■

Purchase Price: \$■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

- (i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;
- (ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and
- (iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By:

Name:

Title:

By:

Name:

Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor**

By:

Name:

Title:

By:

Name:

Title:

EXHIBIT B
FORM OF MONTHLY REPORT

See Attached

E-B- 1

MONTHLY REPORT

[NTD: Subject to continuing review by the Dealers and Counsel to confirm form of Monthly IESO Reporttheir counsel.]

TO: [FINANCING ENTITY]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted~~ by [INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.3~~■ of the Master Transfer and Servicing Agreement the Servicer hereby certifies in respect of the Billing Period corresponding to the calendar month of ■, ■, as follows:

	Item	Amount
(A)	Servicer CEA ~~Collections~~ <u>Receipts</u> :	\$■
(B)	Balance of Collection Account:	\$■

[NTD: Any additional information considered necessary for OPG/IESO to be included.]

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C

FORM OF MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT

See Attached

|

|

MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■

Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and the INDEPENDENT ELECTRICITY SYSTEM OPERATOR~~ (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ [INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly ~~Funding Rebate~~Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.4(a)~~3.14 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly ~~Funding Expenses incurred by the Issuer~~Carrying Costs in respect of the calendar month of ■, ■ are as follows:

<u>Monthly Funding Expense</u>	<u>Amount</u>
Funding ~~Costs~~ <u>costs</u> :	\$■
~~Finance Reserve Deposits~~ <u>Derivative payments to be made:</u>	\$■
<u>Amounts deposited into accounts other than capital accounts:</u>	\$■
Financing ~~Entity Expenses~~ <u>entity expenses</u> :	\$■
Tax ~~Liabilities (net of Tax Refunds)~~ <u>liabilities</u> :	\$■
Total Monthly Funding Expense <u>Subtotal:</u>	\$■
LESS:	
<u>Amounts withdrawn from accounts other than capital accounts:</u>	
<u>Derivative payments to be received:</u>	
<u>Tax refunds:</u>	\$■
	<u>Subtotal:</u> \$■
<u>Monthly Carrying Costs</u>	\$■

~~[NTD: Any additional information considered necessary for OPC/IESO to be included.]~~

In accordance with Section ~~3.4~~3.14(b) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the ~~Total~~ Monthly ~~Funding Expense~~Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

E-C- 3

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on October-25-17 12:04:10 PM

Input:	
Document 1 ID	file:///C:/Users/rramchan/Desktop/Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version).docx
Description	Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version)
Document 2 ID	interwovenSite:///INVENTORYS1/TorysAtWork/24367979/3
Description	#24367979v3<TorysAtWork> - Fair Hydro - MTSA (Osler Oct 20 Draft)
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
~~Deletion~~	
~~Moved from~~	
<u>Moved to</u>	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	437
Deletions	421
Moved from	29
Moved to	29
Style change	0
Format changed	0

Total changes	916

MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

~~Acknowledged~~ = and ~~Accepted by~~

=

■
as Indenture Trustee

Dated as of ■, 2017

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Sections and Headings	8
1.3 Extended Meanings	8
ARTICLE 2 TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET	9
2.1 Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset	9
2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset	~~11~~ 10
ARTICLE 3 ROLE OF THE SERVICER	~~13~~ 11
3.1 Designation of Servicer	~~13~~ 11
3.2 ~~Duties of Servicer Generally~~	~~13~~ Forecast of Electricity Consumption 12
3.3 ~~Remittances~~	~~14~~ ISO Deferral 12
3.4 ~~[Funding Rebates]~~	~~15~~ Clean Energy Adjustments and Electricity Vendors 12
3.5 Reporting ~~Functions~~	~~16~~ 14
3.6 Remittances	15
3.7 Limits to Obligations	15
3.8 Servicing and Maintenance Standards	16
3.7 ~~Binding Effect of Servicing Obligations~~	~~16~~ 3.9 Appointm
3.10 Term	16
3.8 ~~Limitation on Liability~~ 3.11	Resignation of Servicer ~~and Others~~ 17
3.12 Mergers	17
3.93.13	The IESO Not to Resign as Servicer 17
3.15 IESO Security for CEA Remittances	18
3.10 ~~Appointments~~	~~18~~
3.11 ~~Effective Period and Termination~~	~~19~~
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO	~~19~~ 18
4.1 Representations and Warranties	~~19~~ 18
4.2 Survival	~~21~~ 20
4.3 Limitations on Representations and Warranties	~~22~~ 21
ARTICLE 5 COVENANTS OF THE IESO	~~22~~ 21
5.1 Existence	~~22~~ 21
5.2 No Transfer or Liens	~~22~~ 21
5.3 Notice of Liens	~~22~~ 21
5.4 Compliance with Law	~~22~~ 21
5.5 Covenants Related to the Investment Interest	~~23~~ 21
5.6 Non-petition Covenants	~~23~~ 22
5.7 Disclosure	~~24~~ 22
5.8 Further Assurances	~~24~~ 22

TABLE OF CONTENTS

(continued)

	Page
5.9 ~~Co-Owner Agreements~~	24
~~5.10~~ Access to Certain Records and Information Regarding Investment Interest	~~24~~ 23
~~5.11~~ 5.10 Maintenance of Operations	2423
ARTICLE 6 IESO INDEMNITIES	~~25~~23
6.1 Liability of the IESO; Indemnities	~~25~~ 23
ARTICLE 7 SERVICER DEFAULT	~~27~~25
7.1 Servicer Default	~~27~~ 25
7.2 Appointment of Successor Servicer	~~28~~ 26
7.3 Waiver of Past Defaults	~~29~~ 27
7.4 Notice of Servicer Default	~~29~~ 27
7.5 Cooperation with Successor Servicer	~~29~~ 28
ARTICLE 8 MISCELLANEOUS	~~30~~28
8.1 Amendment	~~30~~ 28
8.2 ~~Notices~~	~~30~~ <u>Withholding Rights</u> 28
8.3 ~~Assignment~~	~~31~~ <u>No Partnership</u> 28
8.4 <u>Notices</u>	28
~~8.5~~ <u>Assignment</u>	~~29~~
~~8.6~~ Limitations on Rights of Third Parties	~~31~~ 29
~~8.5~~ 8.7 Severability	~~31~~ 30
~~8.6~~ 8.8 Separate Counterparts; Electronic Delivery	~~31~~ 30
~~8.7~~ 8.9 Governing Law	~~32~~ 30
~~8.8~~ ~~Assignment~~ 8.10 <u>Grant of Security Interest</u> to Indenture Trustee	~~32~~ 30
~~8.9~~ ~~Limitation of Liability of Indenture Trustee~~	~~32~~
~~8.10~~ ~~Limitation of Liability of the Issuer Trustee~~	~~32~~
~~8.11~~ ~~Waivers~~	~~33~~ <u>Limitation of Liability of Indenture Trustee</u> 30
 8.12 ~~Indenture Trustee Actions~~	 ~~33~~
~~8.13~~ <u>Limitation of Liability of the</u> Issuer Trustee	~~34~~ 30
<u>8.13</u> <u>Waivers</u>	<u>31</u>

EXHIBIT

Exhibit A	–	Form of Transfer Notice
Exhibit B	–	Form of Monthly Report
Exhibit C	–	Form of Monthly ~~Funding Rebate~~ <u>Carrying Costs</u> Statement

TABLE OF CONTENTS
(continued)

Page

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario

(the “**Issuer**”)

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the “**Transferor**” in its capacity as transferor, the “**Servicer**”, in its capacity as servicer, and the “**IESO**” in its capacity as both Transferor and Servicer)

- ~~acknowledged~~ and ~~accepted by~~ -

[INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the “**Indenture Trustee**”)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the “**Act**”) for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the “**Regulatory Asset**”);

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer a ~~specified portion~~ Specified Portion of the Regulatory Asset to the Issuer on a fully-serviced

basis, and pursuant to Section 26(3) of the Act, such a Transfer ~~shall result~~ results in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the ~~specified portion~~ Specified Portion of the Regulatory Asset;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer desires to be so engaged;

AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors (as defined in the Indenture) and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

“**Act**” has the meaning ascribed thereto in the recitals;

~~“**Administrative Agent**” means OPG, in its capacity as administrative agent of the Issuer;~~

~~“**Administrative Services Agreement**” means the administrative services agreement dated ■, 2017 between the Administrative Agent and the Issuer concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Issuer;~~

~~“**Affiliate**” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the~~

~~ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing;~~

“**Agreement**” means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions “herein”, “hereof”, “hereto”, “hereunder” and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

“**Billing Period**” means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

“**Board**” means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, ~~or the office of the Indenture Trustee is,~~ authorized or obligated by law, regulation or executive order to be closed;

“**Carrying Costs**” has the meaning ascribed to the term “carrying costs” in the Regulations;

“**CEA Consumer Invoice Amounts**” means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

“**Clean Energy Adjustment**” has the meaning ascribed to the term “clean energy adjustment” in the Act;

“**Closing Date**” means the date on which a Transfer is completed as specified in the applicable Transfer Notice;

“**Co-Owner Agreement**” means any agreement between, *inter alia*, the ~~Issuer~~ parties hereto and any other owner or owners of an Investment Interest as contemplated by ~~subsection~~ Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

“**Co-Owner Implementation Date**” means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

“**Collection Account**” has the meaning ascribed thereto in Section [8.02(a)]¹ of the Indenture;

~~“**Corporate Trust Office**” means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at ■; Telephone: ■; Email: ■, or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice;~~

¹ All cross-references to the Indenture to be conformed to the final version of the Indenture.

“Daily Remittance Event” means ~~■ [NTD: Definition to be tied to the loss of investment grade ratings of the IESO]~~ the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

“Declaration of Trust” means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

~~“Electricity Act” means the Electricity Act, 1998, SO, 1998;~~

“Electricity Vendor” has the meaning ascribed to the term “electricity vendor” in the Act;

“Electricity Vendor CEA Collections” means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

“Electricity Vendor Billing Period Report” means a report as contemplated by Section 17(s) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

- (a) its total CEA Consumer Invoice Amounts in such Billing Period;
- (b) its total Electricity Vendor CEA Collections during such Billing Period; and
- (c) such other information as may be agreed to.

“Eligible Deposit Account” means an account in Canada with an Eligible Institution;

“Eligible Institution” means:

- (a) at any time before the Co-Owner Implementation Date, an “Eligible Institution” as defined in the Indenture; and
- (b) at any time on or after the Co-Owner Implementation Date, an “Eligible Institution” as defined in the applicable Co-Owner Agreement;

“Fair Hydro Variance Account” means the variance account established by the IESO pursuant to ~~subsection~~ Section 24(1) of the Act;

~~“Finance Reserve Deposit” has the meaning ascribed to the term “finance reserve deposit” in the Regulations;~~

“Financing Entity” has the meaning ascribed to the term “financing entity” in the Act;

~~“Financing Entity Expenses” has the meaning ascribed to the term “financing entity expense” in the Regulations;~~

~~“Funding Cost” has the meaning ascribed to the term “funding cost” in the Regulations;~~

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act;

~~["Funding Rebate" has the meaning ascribed thereto in Section 3.4(b);][NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]~~

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

“IESO” or “Independent Electricity System Operator” means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act*, 1998, S.O. 1998;

[NTD: The Issuer may at some point have to publicly file this Agreement, and a copy of it will be circulated to the rating agencies. Therefore, it seems prudent not to include IESO bank account details in the Agreement.]

~~“IESO Deferral”; at any time, means the amount determined by the IESO under subsection 23(1) of the Act and sections 15 and 16 of the Regulations and recorded by the IESO under subsection 24(1) of the Act in the Fair Hydro Variance Account at such time~~ has the meaning ascribed to the term “IESO deferral” in the Act;

“IESO Disclosure” has the meaning ascribed thereto in Section 5.7;

“IESO Segregated Account” has the meaning ascribed thereto in Section means the account established under Section ~~3.3~~3.4(a);

“Indemnified Losses” has the meaning ascribed thereto in Section 6.1(a);

“Indemnified Party” has the meaning ascribed thereto in Section 6.1(a);

“Indenture” means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

“Indenture Trustee” means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

“Insolvency Event” means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization,

moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within [45] days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

“**Investment Asset**” has the meaning ascribed to the term “investment asset” in the Act;

“**Investment Interest**” has the meaning ascribed to the term “investment interest” in the Act;

“**Issuer**” means ■, a trust formed under the laws of the Province of Ontario;

“**Issuer Funding Obligations**” means the Funding Obligations of the Issuer;

“**Issuer Investment Interest**” means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

“**Issuer Share**” means:

- (a) at any time before the Co-Owner Implementation Date, 100%; and
- (b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

“**Issuer Trustee**” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

“**Lien**” means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

“**Management Agreement**” means the management agreement dated ■, 2017 between the Manager and the Issuer;

“**Manager**” means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

“**Minister**” means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

“**Monthly ~~Funding Expenses~~ Carrying Costs**” has the meaning ascribed thereto in Section 3.43.14(ab);

“**Monthly ~~Funding-Rebate~~ Carrying Costs Statement**” has the meaning ascribed thereto in Section 3.43.14(ab);

“**Monthly Report**” has the meaning ascribed thereto in Section ~~3.3~~3.5(ea);

“**Officer’s Certificate**” means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section [10.01] of the Indenture, and delivered to the Indenture Trustee;

“**OPG**” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

“**Opinion of Counsel**” means one or more written opinions of counsel, ~~who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel,~~ which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

~~“**Outstanding Amount**” means the aggregate principal amount of all Funding Obligations outstanding at the date of determination;~~

“**Permitted Successor**” means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

“**Permitted Transfer**” means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

“**Person**” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

“**Proceeding**” means any suit in equity, action at law or other judicial or administrative proceeding;

~~“**Program Agreements**” means the Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Administrative Services Agreement, this Agreement, each Transfer Notice, any Co-Owner Agreements, the Provincial Protection and Assurances Agreement and any hedging agreements, credit enhancement agreements, loan agreements and underwriting or agency agreements in effect at such time and all other documents and certificates delivered in connection therewith;~~has the meaning ascribed thereto in the Indenture;

~~“**Provincial Protection and Assurances Agreement**” means the Provincial Protection and Assurances Agreement dated as of ■, 2017 between [Her Majesty the Queen in Right of Ontario, as represented by the Minister, the Indenture Trustee and the Issuer][NTD: Subject to finalization of agreement];~~

“**Purchase Price**” has the meaning ascribed thereto in Section 2.1(a);

“Rating Agency” has the meaning ascribed thereto in the Indenture;

“Rating Agency Condition” has the meaning ascribed thereto in the Indenture;

“Records” has the meaning ascribed thereto in Section 7.1;

~~“Reference Period” has the meaning ascribed to the term “reference period” in the Act;~~

“Regulations” means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

“Regulatory Asset” has the meaning ascribed thereto in the recitals;

“Released Parties” has the meaning ascribed thereto in Section 6.1(e~~f~~);

“Remittance Date” means, in respect of each Billing Period, the [3rd]²~~Service~~ Business Day following the last day of each Billing Period;

“Required Servicer Rating” means ■; [NTD: Definition to tie to loss of investment grade credit rating.]

“Requirement of Law” means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

“Responsible Officer” means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; (c) a Successor Servicer, any authorized director or officer of the Successor Servicer; and (d) the Indenture Trustee, any officer ~~within the Corporate Trust Office~~ of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer’s knowledge and familiarity with the particular subject);

“Servicer” means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

~~“Service Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed, on which the Servicer maintains normal office hours and conducts business;~~

“Servicer CEA CollectionsReceipts” has the meaning ascribed thereto in Section 3.2(a)(ii)~~3.4(e)~~;

²~~-Based on the monthly payment cycle charts prepared by OPG.~~

“**Servicer Default**” has the meaning ascribed thereto in Section 7.1;

“**Specified Consumer**” has the meaning ascribed to the term “specified consumer” in the Act;

“**Specified Creditors**” has the meaning ascribed thereto in the Indenture;

“**Specified Portion**” means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

“**Successor Servicer**” has the meaning ascribed thereto in Section [3.07(e)] of the Indenture;

“**Supplemental Indenture**” means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

~~“**Tax Liability**” has the meaning ascribed to the term “tax liability” in the Regulations;~~

~~“**Tax Refund**” has the meaning ascribed to the term “tax refund” in the Regulations;~~

“**Termination Event**” has the meaning ascribed thereto in Section 3.11■;

“**Termination Notice**” has the meaning ascribed thereto in Section 7.1;

“**Transfer**” has the meaning ascribed to the term “transfer” in the Act, and “**Transferred**” has a corresponding meaning;

“**Transfer Notice**” means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(a) of this Agreement; and

“**Transferor**” means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings³²■

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

- (a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration

³²■ Torts to conform boilerplate provisions, as applicable, across all transaction documents.

- means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.
- (b) The term “**including**” means “including without limitation”, and other forms of the verb “**include**” have correlative meanings.
 - (c) All references to any Person shall include such Person’s permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.
 - (d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word “**from**” means “**from and including**” and each of the words “**to**” and “**until**” means “**to but excluding**”.
 - (e) The words “**hereof**”, “**herein**” and “**hereunder**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.
 - (f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.
 - (g) The word “**will**” shall be construed to have the same meaning and effect as the word “**shall**”. The word “**or**” is not exclusive.

ARTICLE 2

TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 **Transfer Notices and Agreement to Transfer a Specified Portion of the Regulatory Asset**

- (a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of ~~each~~any calendar month, ~~provide offer~~ to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the ~~specified~~

~~portion~~Specified Portion of the Regulatory Asset that the Transferor ~~desires is offering~~ to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the “**Purchase Price**”) which shall be equal to the amount of ~~the specified portion~~such Specified Portion of the Regulatory Asset ~~that the Transferor proposes to Transfer to the Issuer~~, (iii) the Closing Date to effect such transfer which shall be no earlier than the 10th Business Day ~~following~~after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other ~~date~~Business Day as may be agreed ~~upon~~ by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

- (b) ~~{The Issuer shall use commercially reasonable efforts to provide reasonable notice to the Transferor if the Issuer has reasonable cause to believe that it will not accept a Transfer Notice sent by the Transferor or that the conditions precedent in Sections 2.2(b)(i), (v), (vi), (vii), (viii) and (vii) will not be satisfied on the relevant Closing Date.}[NTD: Subject to review by OPG.]~~
- (b) ~~(e)~~ On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor’s offer to Transfer the ~~portion~~Specified Portion of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the ~~specified portion~~Specified Portion of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.
- (d) ~~In consideration and as an inducement for the Issuer to acquire the Investment Interest at the Purchase Price, the Transferor shall, concurrently with each such Transfer and in accordance with Section 3.4, agree to pay to the Issuer all Monthly Funding Expenses that are incurred by or on behalf of the Issuer in connection with each applicable Transfer in respect of each calendar month in which there are no Clean Energy Adjustments billed to Specified Consumers.~~
- (c) ~~(e)~~ Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(c) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.
- (d) ~~(f)~~ Upon receipt by the Transferor of the payment referred to in Section 2.1(c), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an

amount equal to the Purchase Price received and shall retain no further right, title or interest in the corresponding Issuer Investment Interest.

- ~~(i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price and, as a consequence, the Regulatory Asset shall be adjusted accordingly; and~~
- ~~(ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and in accordance with section 27(1) of the Act, shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer.~~
- ~~(g) Any Transfer of a specified portion of the Regulatory Asset by the Transferor pursuant to this Agreement shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer, shall be treated as a true sale and not as a pledge of or secured transaction relating to the Transferor's right, title, and interest in, to, and under the specified portion of the Regulatory Asset. After giving effect to a Transfer contemplated hereby, the Transferor shall have no right, title or interest in, to or under the corresponding Investment Interest because (i) it has Transferred all of its right, title and interest in and to the corresponding specified portion of the Regulatory Asset to the Issuer, (ii) as provided in the Act, all right, title and interest to the corresponding Investment Interest shall be vested in the Issuer, (iii) as provided in the Act, such Transfer is perfected, vested, valid and binding as against the Transferor and all other Persons who may have claims of any kind against the Transferor, regardless of whether the Persons who have claims have received notice of the Transfer, and (iv) the property rights and interests acquired by the Issuer shall be free and clear of any Liens arising through the IESO.~~
- (e) The parties intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(d), of a Specified Portion of the Regulatory Asset and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

- (a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a ~~specified portion~~Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer and the Indenture Trustee, of the following ~~condition~~conditions:

- (i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:
 - (A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the ~~Program Agreements to which~~ performance by the IESO ~~is party of~~ its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement ~~or any of the Program Agreements to which the IESO is party and authorized to give notices and instructions hereunder (which can be changed by notice hereunder)~~; and
 - (B) ~~reports showing the results of searches conducted against the IESO under applicable personal property security registers in the Province of Ontario together with executed copies of all discharges or releases of prior security interests relating to the Regulatory Asset subject to the Transfer; provided that the IESO may establish that any particular registration does not affect the Regulatory Asset by delivering a letter or acknowledgment signed by the applicable secured party; the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]~~
- (b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a ~~specified portion~~ Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:
 - (i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;
 - (ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor ~~is not insolvent and will not have been made insolvent by such Transfer and the Transferor~~ is not aware of any pending ~~insolvency~~ Insolvency Event with respect to itself;

- (iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred ~~and not been waived~~be continuing, and (C) no Servicer Default shall have occurred and ~~not been waived~~be continuing;
- (iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the ~~specified portion~~Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;
- (v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);
- ~~(vi) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them [NTD: Scope of opinions required to be confirmed by the Dealers and their counsel];~~
- (vi) ~~(vii)~~ as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and
- (vii) ~~(viii)~~ after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3 ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a specified portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be ~~fully~~ serviced by the Servicer in

accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled to receive any further compensation from the Issuer ~~or the Indenture Trustee~~ for its services in connection therewith. The Servicer ~~acknowledges the responsibility of the Servicer for servicing the related Issuer Investment Interest corresponding to the specified portion of the Regulatory Asset Transferred by the Transferor under this Agreement and hereby agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.~~

3.2 ~~Duties of Servicer Generally~~Forecast of Electricity Consumption

(a) ~~The Servicer shall:-~~

- ~~(i) issue settlement statements to Electricity Vendors that include amounts in respect of the Clean Energy Adjustment as prescribed by the Act and the Regulations;~~
- ~~(ii) receive from Electricity Vendors amounts in respect of Electricity Vendor CEA Collections including payments made directly to the IESO as an Electricity Vendor (such amounts received being “Servicer CEA Collections”);~~
- ~~(iii) hold and remit Servicer CEA Collections in accordance with Section 3.3;~~
- ~~(iv) receive information from Electricity Vendors in respect of CEA Consumer Invoice Amounts and Electricity Vendor CEA Collections and such other information as the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required;~~
- ~~(v) determine and record the IESO Deferral for each month and make any necessary corrections thereto in accordance with the Act and the Regulations;~~
- ~~(vi) forecast electricity demand by Specified Consumers for Reference Periods;~~

The IESO shall:

- ~~(a) (vii) provide information to the Board in respect of forecast electricity demand or any other information the Board may require from the Servicer to facilitate the Board’s determination of the rates at which~~and the Financial Services Manager the forecasts of electricity consumption by Specified Consumers ~~are to be invoiced so as to enable full recovery of the Clean Energy Adjustment in respect of any Reference Period; as contemplated by Section 8(3) of the Regulations; and~~
- ~~(viii) respond to inquiries by Electricity Vendors, the Board or any other Governmental Authority with respect to the Clean Energy Adjustment;~~

- (ix) ~~investigate and handle delinquencies by Electricity Vendors regarding Servicer CEA Collections (and furnish reports with respect to such delinquencies to the Issuer);~~
 - (x) ~~process and deposit Servicer CEA Collections and make periodic remittances to the Issuer in accordance with Section 3.3;~~
 - (xi) ~~furnish periodic and current reports to the Issuer, the Board, the Indenture Trustee and the Rating Agencies, as may reasonably be required by the Issuer;~~
 - (xii) ~~take all necessary action in connection with Funding Rebates as set forth herein and in the Regulations; and~~
 - (xiii) ~~perform such other duties as may be reasonably required from time to time to be performed by it.~~
- (b) ~~Without limiting the generality of Section 3.2(a), in furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with, the duties and responsibilities relating to data acquisition, consumption and settlement statement calculation, settlement, collections, posting, payment processing and remittance with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar assets for its own account and, if applicable, for others.~~ provide to the Board and the Financial Services Manager such other information and reports as the Board or the Financial Services Manager may reasonably request in connection with the calculation of the Clean Energy Adjustments and which is reasonably available to the Transferor without incurring material incremental expense.
- (c) ~~Notwithstanding anything to the contrary in this Agreement, the duties of the Servicer set forth in this Agreement shall be qualified and limited in their entirety by the Act, the Regulations, all applicable laws and the rules and regulations promulgated thereunder as in effect at the time such duties are to be performed.~~

3.3

Remittances ISO Deferral

- (a) The IESO shall:
 - (a) determine the IESO Deferral as required by Section 23 of the Act and the Regulations; and
 - (b) maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

3.4

Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

- (a) prior to receiving Servicer ~~shall~~ CEA Receipts, establish an Eligible Deposit Account (the “IESO Segregated Account”) bearing a designation ~~clearly~~ indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. ~~Interests~~ If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account-;
- (b) prior to the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, make reasonable efforts to work with each Electricity Vendor to:

 - (i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;
 - (ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor; and
 - (iii) establish procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; [NTD: Generally, someone will need to take responsibility for educating the Electricity Vendors and we believe the IESO is best positioned to take on this role given its existing relationships and opportunities to interact with the EVs.]
- (c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;
- (d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;
- (e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(d), the “Servicer CEA Receipts”);

- (f) ~~(b) The Servicer shall~~ deposit ~~all the~~ Servicer CEA ~~Collections~~Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within ~~two Servicer~~ Business Days of receipt by the Servicer and ~~the Issuer Share of~~ such Servicer CEA ~~Collections~~Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section ~~3.3(d)~~3.6;
- (g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;
- (h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within ■ Business Days of the end of each Billing Period;
- (i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount remitted pursuant to Section 3.4(d);
- (j) make reasonable efforts to contact each Electricity Vendor that:
- (i) does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;
 - (ii) does not remit any Electricity Vendor CEA Collections in accordance with Section 3.4(d) or remits Electricity Vendor CEA Collections that do not match the amount thereof reported in its Electricity Vendor Billing Period Report,
 - (iii) delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or
 - (iv) does not certify that it has established the segregated account required by Section 10(2) of the Regulations,
- and attempt to resolve the applicable issue;
- (k) on a periodic basis as requested by the Issuer, review, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that in the absence of evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Servicer shall not be required to review the records of a Electricity Vendor more often than ■,
- (l) ~~(e) The IESO agrees and acknowledges that it holds all~~ hold the Issuer Share of Servicer CEA ~~Collections~~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, ~~any other owner of Investment Interests, the Indenture Trustee and the Specified Creditors and that all such amounts will be remitted by the Servicer and~~ remit such amounts in accordance with this Section ~~3.3~~3.6 without any surcharge, fee, offset, charge or other deduction.

3.5 Reporting

The IESO ~~further agrees not to make any claim to reduce its obligation to remit all Servicer CEA Collections received by it in accordance with this Agreement.~~ Servicer shall:

- (d) ~~Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Collections received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period. Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Collections on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Servicer Business Day.~~
- (a) ~~(e) On or before the [2nd] Servicer Business Day following the end of each Billing Period, the Servicer shall prepare and deliver to the Issuer, the Indenture Trustee and the Rating Agencies a written report substantially in the form of Exhibit B (a "Monthly Report").~~

3.4 [Funding Rebates]

~~[NTD: Terminology and provisions relating to IESO payment of carrying costs during the moratorium period subject to finalization of regulations creating this obligation.]~~

- (b) report to the Issuer any delinquencies by Electricity Vendors in respect of the CEA amounts collected and the remittance of Electricity Vendor CEA Collections;
- (c) ~~(a) On or before the [4th] Servicer Business Day following the end of each calendar month in which no Clean Energy Adjustment is billed to Specified Consumers, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "Monthly Funding Rebate Statement") setting out the aggregate amount of all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Financing Entity Expenses, and (iv) Tax Liabilities (net of Tax Refunds), that were incurred by or on behalf of the Issuer during the previous calendar month ("Monthly Funding Expenses").~~ report to the Issuer any unresolved matters referred to in Section 3.4(j);
- (b) ~~On or before the [10th] Servicer Business Day following receipt by the IESO of the Monthly Funding Rebate Statement, the IESO shall, as required by the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer in~~

~~immediately available funds, an amount in Canadian dollars equal to the Monthly Funding Expenses set forth in the applicable Monthly Funding Rebate Statement (the “Funding Rebate”).~~

3.5 Reporting Functions

- ~~(d) (a) Notification of Laws and Regulations. The Servicer shall~~ promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer’s ability to perform its duties and obligations under this Agreement; and
- ~~(e) (b) Other Information. Upon~~upon the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, ~~the Servicer shall~~ provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the Issuer Investment Interest or the Regulatory Asset, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder. ~~In addition, the Servicer shall provide the Issuer and the Indenture Trustee, within a reasonable time after written request therefor, any information available to the Servicer or reasonably obtainable by it that is necessary to calculate the Clean Energy Adjustment.~~

3.6 Remittances

- (a) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer during a Billing Period and any interest earned thereon shall be remitted by the Servicer to the Collection Account no later than the Remittance Date immediately following such Billing Period.
- (b) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on each Business Day.

3.7 Limits to Obligations

Without in any way limiting the duties and obligations of the Servicer arising under the Act or the Regulations, the parties hereto agree the duties and obligations of the Servicer under this Agreement are limited as provided in this Section 3.7.

- (a) The Servicer is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

- (b) The Servicer is not responsible for enforcing the obligations of Specified Consumers or Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts.
- (c) The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.
- (d) The Servicer is under no responsibility or obligation to the Issuer with respect to whether the Clean Energy Adjustments funds remitted by the Servicer to Issuer during any or all periods is sufficient to satisfy the Issuer's obligations.
- (e) The Servicer is under no obligation to initiate or prosecute any legal action relating to the collection of the Issuer Investment Interest.

3.8

3.6 Servicing and Maintenance Standards

- (a) ~~The Servicer shall monitor payments and impose collection policies on Electricity Vendors with respect to Electricity Vendor CEA Collections. On behalf of the Issuer, the Servicer shall: (a) manage, service, administer, collect and receive Servicer CEA Collections with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to the collection of other amounts from Electricity Vendors for its own account and, if applicable, for others; (b) follow standards, policies and procedures in performing its duties as Servicer that are customary for an electricity market operator and administrator that regularly performs settlement functions; (c) use all reasonable efforts, consistent with its customary servicing procedures, to receive and hold Servicer CEA Collections in trust for the benefit of the Issuer; (d) comply with each Requirement of Law, including all regulations and guidelines, applicable to and binding on it relating to its duties hereunder; and (e) provide all information to the Board as required by the Act and the Regulations. The Servicer shall follow such customary and usual practices and procedures as it shall deem necessary or advisable in its servicing of all or any portion of the Investment Asset and the Issuer Investment Interest, which may include, at the direction of the Issuer, the taking of legal action, at the Issuer's expense but subject to the priority~~

of payments set forth in ~~[Section 8.02(e)]~~ of the Indenture. In no event shall the Issuer Investment Interest be set off at any time by the IESO or any Permitted Successor thereof in connection with any default by such Person or otherwise. discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance the Requirements of Law, including the Act and the Regulations and shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions. In furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with reasonable care and in material compliance with applicable Requirement of Laws, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar settlement activities on its own account.

3.7 Binding Effect of Servicing Obligations

- (b) The Servicer may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.
- (c) Neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.9 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.11.

3.10 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "Termination

Event”). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.11 Resignation of Servicer

The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.12 Mergers

~~The obligations to continue to provide services and to receive and account for Servicer CEA Collections and related amounts will be binding upon the Servicer and any Permitted Successor so long as the Servicer CEA Collections have not been fully received and posted.~~ Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer’s Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section ~~3.73.12~~ and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section ~~3.73.12~~, then, upon satisfaction of all of the other conditions of this Section ~~3.73.12~~, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.8 Limitation on Liability of Servicer and Others

- (a) ~~Except as otherwise provided under this Agreement, including Section 6.1, neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that would otherwise be imposed by reason of negligence, recklessness or willful misconduct in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person, respecting any matters arising under this Agreement.~~
- (b) ~~Except as provided in this Agreement, the Servicer shall not be under any obligation to appear in, prosecute or defend any legal action relating to the Issuer Investment Interest that is not directly related to one of the Servicer's enumerated duties in this Agreement or related to its obligation to pay indemnification, and that in its reasonable opinion may cause it to incur any expense or liability; provided, however, that the Servicer will, at the direction of the Issuer, in respect of any Proceeding, undertake any action that is not specifically identified in this Agreement as a duty of the Servicer but that the Issuer reasonably determines is necessary or desirable in order to protect the rights and duties of the Issuer or the Indenture Trustee under this Agreement and the interests of Specified Creditors under the Indenture.~~

3.13 ~~3.9~~ The IESO Not to Resign as Servicer

Subject to the provisions of Section ~~3.7~~**3.12**, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer, the Indenture Trustee and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.10 Appointments

3.14 IESO Regulatory Obligation to Pay Carrying Costs

- (a) ~~Subject to Section 3.10(b), the Servicer may at any time appoint any Person to perform all or any portion of its obligations as Servicer hereunder; provided, however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided, further, that the Servicer shall remain obligated and be liable under this Agreement for the servicing and administering of the Issuer Investment Interest in accordance with the provisions hereof without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Investment Interest. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and none of the Issuer, the Indenture Trustee, Specified Creditors or any other Person shall have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.9.~~ During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall, as required under the Regulations, pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs during the period beginning on June 1, 2017 and ending on July 31, 2021.
- (b) ~~The following matters shall be performed by the Electricity Vendors in accordance with the Act and shall not be considered an “appointment” for purposes of Section 3.10(a): (i) invoicing Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) collection from Specified Consumers of payments in respect of such invoices and remittance of such payments to the Servicer; and (iii) reporting to the Servicer the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and such other information the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required. The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations or in respect of the matters set out in this Section 3.10(b).~~ On or before the 4th Business Day of each calendar month, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a “Monthly Carrying Costs Statement”) setting out the amount of Carrying Costs in respect of the preceding calendar month (“Monthly Carrying Costs”).

3.11 Effective Period and Termination

- (c) On or before the 8th Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth in the applicable Monthly Carrying Costs Statement.

3.15 IESO Security for CEA Remittances

~~The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "Termination Event"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.~~ If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to \$■, or such other form of security as may be acceptable to the Issuer and the Indenture Trustee, as security for any failure of Electricity Vendors, following [July 31, 2021], to remit the Electricity Vendor CEA Collections.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 4.3, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer and the Indenture Trustee will rely thereon in paying the Purchase Price related to Transfers of ~~specified portions~~ Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

- (a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, ~~and to execute, deliver and carry out the terms of this Agreement, including, for greater certainty, acting as Servicer in accordance with this Agreement.~~
- (b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset, or the servicing of related Investment Interests, ~~the Issuer or the repayment when due of the Funding Obligations.~~

- (c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer ~~specified portions~~ Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.
- (d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).
- (e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.
- (f) No Proceedings. ~~There are no Proceedings or, to~~ To the IESO's knowledge, ~~investigations~~ there are no Proceedings pending or ~~Proceedings~~ threatened, ~~before any Governmental Authority having jurisdiction over~~ against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.
- (g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

- (h) ~~Information.~~ ⁽ⁱ⁾ At the date hereof and as of each applicable Closing Date, except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.
- (ii) ~~Each report and certificate delivered in connection with any filing made or information provided to the Board by the IESO in connection with the Act, including on behalf of the Issuer with respect to Clean Energy Adjustments, will constitute a representation and warranty by the IESO that each such report or certificate, as the case may be, is true and correct in all material respects; provided, however, that, to the extent any such report or certificate is based in part upon or contains assumptions, forecasts or other predictions of future events, the representation and warranty of the IESO with respect thereto will be limited to the representation and warranty that such assumptions, forecasts or other predictions of future events are reasonable based upon historical performance (and facts known to the IESO on the date such report or certificate is delivered).~~
- (i) ~~The Transfer.~~ On After the completion of the Transfer on the applicable Closing Date, ~~the specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice shall be validly Transferred to the Issuer and the~~ IESO will have no right, title or interest in the ~~related~~ Investment Interest related to the Specified Portion of the Regulatory Assets as set forth in the applicable Transfer Notice and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.
- (j) ~~No Transfer.~~ Except ~~pursuant to any Co-Owner Agreement, no portion of for~~ Permitted Transfers, the ~~Regulatory Asset~~ IESO has ~~been~~ not sold, transferred, assigned, ~~or otherwise conveyed any interest in the Regulatory Asset to any Person.~~
- (k) ~~Liens.~~ IESO has not pledged or otherwise ~~conveyed by the IESO~~ granted a Lien to any Person ~~other than the Issuer or the Indenture Trustee, and, in the Regulatory Asset and~~ to the IESO's knowledge (after due inquiry), ~~no security agreement, there is no registered~~ financing statement ~~or equivalent security or lien instrument listing the IESO as debtor covering all or a portion of the Regulatory Asset (or the corresponding Investment Interest upon the Transfer thereof) is on file or of record in any jurisdiction, except such as may have been filed or recorded in favour of the Issuer or the Indenture Trustee in connection with the Program Agreements.~~ (k) ~~Title.~~ The IESO is the sole owner of the specified portion of the Regulatory Asset that is to be Transferred to the Issuer on

~~the applicable Closing Date, free and clear of all Liens~~ or extending to the Regulatory Asset.

- (l) Tax Liens. ~~After due inquiry, the~~ The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the Income Tax Act (Canada).
- (m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:
- ~~(i) is solvent and expects to remain solvent;~~
 - (i) ~~(ii)~~ reasonably believes that it will be able to pay its debts as they come due; and
 - (ii) ~~(iii)~~ is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.
- (n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of an Investment Interest to the Issuer and the pledge thereof to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

4.3 Limitations on Representations and Warranties

Notwithstanding anything in this Agreement to the contrary, the IESO makes no representation or warranty with respect to the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer's Share of Servicer CEA ~~Collections will~~ Receipts be sufficient to satisfy ~~in full~~ the Issuer's Funding Obligations.

ARTICLE 5 COVENANTS OF THE IESO

5.1 Existence

~~Subject to Section 3.9, so~~ So long as any Issuer Funding Obligations are outstanding, the IESO (a) will keep in full force and effect its existence and remain validly

existing under the laws of the Province of Ontario, and (b) will obtain and preserve its qualifications to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Agreement and each other instrument or agreement to which the IESO is a party necessary for the proper administration of this Agreement and the transactions contemplated hereby.

5.2 No ~~Transfer or~~ Liens

Except for ~~(a) the Transfers under this Agreement to the Issuer or any Lien for the benefit of the Specified Creditors or the Indenture Trustee, and (b) following the Co-Owner Implementation Date, Transfers to other Financing Entities who enter into a Co-Owner Agreement with the Issuer and Liens granted in connection therewith to Persons advancing Funding Obligations to such other Financing Entities, the IESO will not sell, pledge, assign or transfer to any other Person, or~~ Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on, ~~any portion of~~ the Regulatory Asset, ~~whether existing as of the applicable Closing Date or thereafter created, or any interest therein or any portion thereof.~~ The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, and will defend the right, title and interest of the Issuer and of the Indenture Trustee, on behalf of the Specified Creditors, in, to and under the Issuer Investment Interest against all claims of third parties claiming through or under the Transferor.

5.3 Notice of Liens

The IESO shall notify the Issuer and the Indenture Trustee promptly after becoming aware of any Lien on any portion of the Regulatory Asset, ~~other than the Transfers hereunder and any Lien pursuant to the Program Agreements.~~

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, the Investment Asset or Investment Interests, except to the extent that failure to so comply would not materially adversely affect the Issuer's, or the Indenture Trustee's ~~or the Specified Creditors'~~ interests in the Issuer Investment Interest ~~under any of the Program Agreements~~, the value of the Issuer Investment Interest, the timing or amount of Clean Energy Adjustments payable by Specified Consumers or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

- (a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.
- (b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations ~~other than Funding Rebates~~.
- (c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).
- ~~(d) The IESO agrees that upon completion of a Transfer, the IESO shall reduce the balance in the Fair Hydro Variance Account by the Purchase Price and will adjust the Regulatory Asset accordingly.~~
- (d) ~~(e)~~ (i) ~~in~~ In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the ~~specified portion~~ Specified Portion of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement, ~~and (iv) the IESO shall not sell any portion of the Regulatory Asset pursuant to the Act to any other Person unless a Co-Owner Agreement has been entered into and the Rating Agency Condition has been satisfied with respect thereto.~~

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide ~~all~~ such non-confidential information regarding ~~the~~ IESO, the ~~IESO Deferral, the~~ Regulatory Asset ~~or~~ and the services provided by the Servicer hereunder (collectively, the "IESO Disclosure") as may be reasonably requested by the Issuer for

inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents and represents that, except in respect information provided by a third party, all such information is, as at the respective dates of delivery to the Issuer, true and correct in all material respects, contains no misrepresentation and constitutes full, true and plain disclosure of all material facts relating to the IESO Disclosure.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 ~~Co-Owner Agreements~~

~~The IESO shall not continue as or become a party to any purchase and sale agreement or similar arrangement (other than this Agreement) under which it sells all or any portion of the Regulatory Asset unless (i) the Rating Agency Condition shall have been satisfied, (ii) the Indenture Trustee, the Transferor and the other parties to such additional arrangement shall have entered into a Co-Owner Agreement in connection therewith, and (iii) the terms of the documentation evidencing such purchase and sale arrangement or similar arrangement shall expressly exclude the Issuer Investment Interest (including the Issuer Share of any Servicer CEA Collections) from any receivables, rights or other assets pledged or sold under such arrangement and unless the purchaser under such arrangement is a Financing Entity.~~

5.9 ~~5.10~~ Access to Certain Records and Information Regarding Investment Interest

The IESO shall provide to the Issuer and the Indenture Trustee access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA ~~Collections~~Receipts, as is reasonably required for the Issuer and the Indenture Trustee to confirm compliance by the IESO with its obligations under this Agreement ~~and any other Program Agreements to which the IESO is a party~~. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section ~~5.10~~5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section ~~5.10~~5.9.

5.10 ~~5.11~~ Maintenance of Operations

Subject to Section ~~3.73~~12, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario ~~in order to provide service~~ so long as it is acting as the Servicer under this Agreement.

ARTICLE 6 IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

- (a) The IESO shall indemnify the Issuer, the Indenture Trustee (for itself and for the benefit of the Specified Creditors), the Manager, ~~the Administrative Agent~~ and each of their respective trustees, officers, directors, employees and agents (each, an “**Indemnified Party**”), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, “**Indemnified Losses**”) imposed on, incurred by or asserted against any such Person as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and (ii) the IESO’s breach of any of its representations or warranties under this Agreement, any Co-Owner Agreement and any other Program Agreement to which the IESO is a party; and ~~(iii) any litigation and related expenses relating to the IESO’s status and obligations as Servicer (other than any Proceeding the IESO is required to institute under this Agreement)~~, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice ~~(or, in the case of the Indenture Trustee, receipt of notice by a Responsible Officer only)~~ of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO’s election to assume the defence of any Proceeding or investigation, the Indemnified Party

shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, (iii) the IESO ~~shall authorize~~authorizes the Indemnified Party to employ separate counsel at the expense of the IESO, or (iv) in the case of the Indenture Trustee, such action exposes the Indenture Trustee to a material risk of criminal liability or forfeiture or a Servicer Default has occurred and is continuing. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

- (b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section ~~3.7~~3.12) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.11 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.
- (c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.
- (d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO. ~~Other than provided in the preceding sentence, the~~
- (e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

- (f) ~~(e)~~ Except to the extent expressly provided in this Agreement (including the payment of the Purchase Price), the IESO hereby releases and discharges the Issuer ~~and the Indenture Trustee~~, and each of ~~their respective~~its trustees, officers, directors and agents (collectively, the “**Released Parties**”), from any and all actions, claims and demands whatsoever, whenever arising, which the IESO, in its capacity as Servicer or otherwise, shall or may have against any such Person relating to the Investment Interest or the IESO’s activities with respect thereto, other than any actions, claims and demands arising out of the willful misconduct, bad faith or gross negligence of the Released Parties.

ARTICLE 7 SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a “**Servicer Default**”) shall occur and be continuing:

- (a) any failure by the Servicer to remit to the Collection Account ~~on behalf of the Issuer~~ any required remittance that shall continue unremedied for a period of **[two/three] [NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer ~~(with a copy to the Indenture Trustee)~~ or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;
- (b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer ~~(with a copy to the Indenture Trustee)~~ or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;
- (c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the

same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture Trustee) by the Issuer or the Indenture Trustee or (ii) such failure is discovered by a Responsible Officer of the Servicer;

- (d) an Insolvency Event occurs with respect to the Servicer or the IESO; or
- (e) any additional “Servicer Default” as specified in any Co-Owner Agreement occurs; ~~or~~
- (f) ~~the termination or withdrawal of the “Servicing Guarantee” under the Provincial Protection and Assurances Agreement. [NTD: Subject to finalization of the Provincial Protection and Assurances Agreement.]~~

then, and in each and every case, the Indenture Trustee shall, upon the instruction of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer’s Funding Obligations~~ as provided for under the Trust Indenture, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (and to the Indenture Trustee if given by the Specified Creditors) (a “**Termination Notice**”), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), the Specified Creditors and the Indenture Trustee (or any of their representatives) shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the ~~Investment Interest~~ Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Indenture Trustee is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, ~~the IESO Deferral~~, the Fair Hydro Variance Account and related documents or records, or otherwise (the “**Records**”). The predecessor Servicer shall cooperate with the Successor Servicer, the Issuer and the Indenture Trustee in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall

not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

- (a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Indenture Trustee may, and at the written direction and with the consent of the Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture shall, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer with the Issuer's prior written consent thereto (which consent shall not be unreasonably withheld), and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Indenture Trustee may, at the direction of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture, petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Indenture Trustee be liable for its appointment of a Successor Servicer. The Indenture Trustee's expenses incurred under this Section 7.2(a) shall be at the sole expense of the Issuer and payable from the Collection Account as provided in [Section 8.02] of the Indenture.
- (b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Indenture Trustee, with the written consent of Specified Creditors ~~evidencing a majority of the Outstanding Amount of the Issuer's Funding Obligations~~ as provided for under the Trust Indenture, may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences, except a default in making any required deposits to the Collection Account in accordance with this Agreement. Upon any such waiver of a past

default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, the Manager, the Indenture Trustee and the Rating Agencies promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8 MISCELLANEOUS

8.1 Amendment

(a) This Agreement may be amended in writing by the IESO ~~and~~, the Issuer ~~with (i) the prior written consent of~~ and the Indenture Trustee, ~~and (ii) the~~ and with satisfaction of the Rating Agency Condition. Promptly after the execution of any such amendment ~~or consent~~, the Issuer shall furnish copies of such amendment ~~or consent~~ to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withholding from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer, the IESO or the Indenture Trustee will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

- ~~(b) Prior to the execution of any amendment to this Agreement, the Issuer and the Indenture Trustee shall be entitled to receive and rely upon an Opinion of Counsel, which counsel may be an employee of or counsel to the Issuer or the IESO and which shall be reasonably satisfactory to the Indenture Trustee, or, in the Indenture Trustee's sole judgment, external counsel of the IESO stating that the execution of such amendment is authorized and permitted by this Agreement and that all conditions precedent provided for in this Agreement relating to such amendment have been complied with. The Issuer and the Indenture Trustee may, but shall not be obligated to, enter into any such amendment that affects their own rights, duties, indemnities or immunities under this Agreement or otherwise.~~

8.4 ~~8.2~~ Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

- (a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
~~[Address]~~ 120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: ■ Chief Financial Officer, General Counsel and Associate
General Counsel

Email: ■

- (b) in the case of the Issuer or the Manager (on behalf of the Issuer):

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■

Email: ■

(c) in the case of the Indenture Trustee:

■

[Address]

Attention: ■

Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 ~~8.3~~ Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 ~~8.4~~ Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO, the Issuer and, to the extent provided herein or in the other Program Agreements, the Indenture Trustee (for its own benefit and for the benefit of the Specified Creditors) and the other Persons expressly referred to herein, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 ~~8.5~~ Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 ~~8.6~~ Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 ~~8.7~~ Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 ~~8.8 Assignment~~ Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to ~~any mortgage, pledge, assignment and~~ the grant of a ~~security interest~~ Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors ~~of~~ against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors. ~~In no event shall the Indenture Trustee have any liability for the representations, warranties, covenants, agreements or other obligations of the Issuer hereunder or in any of the certificates delivered pursuant hereto, as to all of which any recourse shall be had solely to the assets of the Issuer subject to the availability of funds therefor under Section [8.02] of the Indenture.~~

8.11 ~~8.9~~ Limitation of Liability of Indenture Trustee

It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Indenture Trustee, not individually or personally but solely as Indenture Trustee on behalf of the Specified Creditors, in the exercise of the powers and authority conferred and vested in it. The Indenture Trustee in acting hereunder is entitled to all rights, benefits, protections, immunities and indemnities accorded to it under the Indenture.

8.12 ~~8.10~~ Limitation of Liability of the Issuer Trustee

- (a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.
- (b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's

activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.10~~8.12, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

- (c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.13

~~8.11~~ **Waivers**

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof; provided, however, that no such waiver delivered by the Issuer shall be effective unless the Indenture Trustee has given its prior written consent thereto. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor

in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

8.12 Indenture Trustee Actions

~~In acting hereunder, the Indenture Trustee shall have the rights, protections and immunities granted to it under the Indenture.~~

8.13 Issuer Trustee

~~In acting hereunder, the Issuer Trustee shall have the rights, protections and immunities granted to it under the Declaration of Trust.~~

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

[FINANCING ENTITY], by its Manager,
**ONTARIO POWER GENERATION
INC.**

By:
Name:
Title:

By:
Name:
Title:

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor and Servicer**

By:
Name:
Title:

By:
Name:
Title:

Signature Page to Master Transfer and Servicing Agreement

ACKNOWLEDGED AND ACCEPTED:

**[INDENTURE TRUSTEE]
as Indenture Trustee**

By:

Name:

Title:

By:

Name:

Title:

Signature Page to Master Transfer and Servicing Agreement

EXHIBIT A
FORM OF TRANSFER NOTICE

See attached

E-A- 1

TRANSFER NOTICE

TO: [FINANCING ENTITY]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and the INDEPENDENT ELECTRICITY SYSTEM OPERATOR (“Transferor”~~ in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by [INDENTURE TRUSTEE]~~, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its ~~desire~~offer to transfer to the Issuer on the Closing Date set out below, on a fully serviced basis, the ~~specified portion~~Specified Portion of the Regulatory Asset set out below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor’s Transfer to the Issuer of the ~~specified portion~~Specified Portion of the Regulatory Asset set out below, on a fully serviced basis, ~~{and (ii) the Transferor’s agreement to pay to the Issuer all (a) Funding Costs, (b) Finance Reserve Deposits, (c) Financing Entity Expenses, and (d) Tax Liabilities (net of Tax Refunds) that are incurred by the Issuer in connection with such Transfer,}~~⁴ the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date, (i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price,³ and the Regulatory Asset shall be adjusted accordingly; and (ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any

⁴ ~~Funding Rebate language to be included in Transfer Notice only when Clean Energy Adjustment is not being charged.~~

adverse claim, and shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest.

Specified portion of Regulatory Asset: \$■

Purchase Price: \$■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

- (i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;
- (ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and
- (iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By:

Name:

Title:

By: _____

Name:

Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor**

By:

Name:

Title:

By: _____

Name:

Title:

EXHIBIT B
FORM OF MONTHLY REPORT

See Attached

E-B- 1

MONTHLY REPORT

[NTD: Subject to continuing review by the Dealers and Counsel to confirm form of Monthly IESO Reporttheir counsel.]

TO: [FINANCING ENTITY]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and~~ the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted~~ by [INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.3~~■ of the Master Transfer and Servicing Agreement the Servicer hereby certifies in respect of the Billing Period corresponding to the calendar month of ■, ■, as follows:

	Item	Amount
(A)	Servicer CEA ~~Collections~~ <u>Receipts</u> :	\$■
(B)	Balance of Collection Account:	\$■

[NTD: Any additional information considered necessary for OPG/IESO to be included.]

DATED this ■ day of ■, 20■.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Servicer**

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C

FORM OF MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT

See Attached

|

|

~~23847049.3~~24367979.3

E-~~C~~B- 2

MONTHLY ~~FUNDING REBATE~~CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■

Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between [FINANCING ENTITY], a trust formed under the laws of the Province of Ontario (the “**Issuer**”), ~~and the INDEPENDENT ELECTRICITY SYSTEM OPERATOR~~ (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario, and ~~acknowledged and accepted by~~ [INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee (the “**Indenture Trustee**”). Capitalized terms used but not defined in this Monthly ~~Funding Rebate~~Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section ~~3.4(a)~~3.14 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly ~~Funding Expenses incurred by the Issuer~~Carrying Costs in respect of the calendar month of ■, ■ are as follows:

<u>Monthly Funding Expense</u>	<u>Amount</u>
Funding ~~Costs~~ <u>costs</u> :	\$■
~~Finance Reserve Deposits~~ <u>Derivative payments to be made:</u>	\$■
<u>Amounts deposited into accounts other than capital accounts:</u>	\$■
Financing ~~Entity Expenses~~ <u>entity expenses</u> :	\$■
Tax ~~Liabilities (net of Tax Refunds)~~ <u>liabilities</u> :	\$■
Total Monthly Funding Expense <u>Subtotal:</u>	\$■
LESS:	
<u>Amounts withdrawn from accounts other than capital accounts:</u>	
<u>Derivative payments to be received:</u>	
<u>Tax refunds:</u>	\$■
	<u>Subtotal:</u> \$■
<u>Monthly Carrying Costs</u>	\$■

~~[NTD: Any additional information considered necessary for OPC/IESO to be included.]~~

In accordance with Section ~~3.4~~3.14(b) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the ~~Total~~ Monthly ~~Funding Expense~~Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

E-C- 3

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

**[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on October-25-17 12:04:10 PM

Input:	
Document 1 ID	file:///C:/Users/rramchan/Desktop/Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version).docx
Description	Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version)
Document 2 ID	interwovenSite:///INVENTORYS1/TorysAtWork/24367979/3
Description	#24367979v3<TorysAtWork> - Fair Hydro - MTSA (Osler Oct 20 Draft)
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
~~Deletion~~	
~~Moved from~~	
<u>Moved to</u>	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	437
Deletions	421
Moved from	29
Moved to	29
Style change	0
Format changed	0

Total changes	916

SECURITY AGREEMENT

THIS AGREEMENT made as of the ____ day of December, 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998,

(hereinafter referred to as the “**Grantor**”),

IN FAVOUR OF: -

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario,

(hereinafter referred to as the “**Secured Party**”),

ACKNOWLEDGED AND ACCEPTED BY:

[INDENTURE TRUSTEE], a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee,

(hereinafter referred to as the “**Indenture Trustee**”),

WHEREAS under Regulation 206/17 made under the *Ontario Fair Hydro Plan Act, 2017* (the “**Regulation**”), the Grantor is required to pay and remit to the Secured Party any amounts charged to the Grantor by the Secured Party in respect of Carrying Costs of the Secured Party during the period beginning on April 1, 2017 and ending on June 30, 2021 (the “**Statutory Obligation**”);

AND WHEREAS the Grantor (collectively referred to as the “**Parties**”) has agreed to enter into a security agreement in favour of the Secured Party as security for, inter alia, the performance of the Statutory Obligation;

AND WHEREAS this Agreement has been assigned by the Secured Party, by way of security, to the Indenture Trustee and the Indenture Trustee wishes to acknowledge and accept the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, for and in consideration of the premises, mutual covenants and conditions herein contained and such other lawful and valuable consideration the receipt of sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless there is something in the context or subject matter inconsistent therewith,

- (a) “**Account**” shall have the meaning attributed to such term in the PPSA;
- (b) “**Appropriation**” shall have the meaning ascribed to such term in the *Financial Administration Act*, R.S.O. 1990, c. F-12, as amended;
- (c) “**Breach**” shall have the meaning attributed to such term in Section 6.1;
- (d) “**Business Day**” means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;
- (e) “**Carrying Costs**” shall have the meaning attributed to such term in the Regulation;
- (f) “**Collateral**” shall have the meaning attributed to such term in Section 2.1;
- (g) “**Excluded Accounts**” means all amounts payable to the Grantor pursuant to Appropriations;
- (h) “**Money**” shall have the meaning attributed to such term in the PPSA;
- (i) “**Permitted Liens**” means liens approved in writing by the Secured Party and the Indenture Trustee ;
- (j) “**PPSA**” means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;
- (k) “**Proceeds**” shall have the meaning attributed to such term in the PPSA;
- (l) “**Receiver**” shall have the meaning attributed to such term in Section 6.2 of this Agreement;
- (m) “**Regulation**” shall have the meaning attributed to such term in the recitals hereto;
- (n) “**Statutory Obligation**” shall have the meaning attributed to such term in the recitals hereto.

1.2 Other Usages

References to “this Agreement”, “hereof”, “herein”, “hereto” and like references refer to this Security Agreement and not to any particular Article, Section or other subdivision of this Agreement.

1.3 Plural and Singular

Where the context so requires, the words importing the singular number shall include the plural and vice versa.

1.4 Headings

The division of this Agreement into Articles and Sections and the insertion of headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.5 Applicable Law

This Agreement and all documents delivered pursuant hereto shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties do hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court, this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

1.7 Time of the Essence

Time shall in all respects be of the essence of this Agreement.

1.8 Recitals and Schedules

Each and every one of the recitals and schedules which are referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

2. SECURITY INTEREST

2.1 Grant of Security Interest

As general and continuing security for the payment and performance of the Statutory Obligation, the Grantor hereby assigns, transfers, sets over and grants a first-priority security interest to the Secured Party in the following (collectively, the “**Collateral**”):

- (a) all Accounts, debts, choses in action and demands of every nature and kind, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Grantor, excluding Excluded Accounts;

- (b) all deeds, documents, writings, papers and books relating to or being records of the property described in Section 2.1(a); and
- (c) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

Whenever used elsewhere in this Agreement, the expression “**security interest**” refers to the security interest created in this Section 2.1.

2.2 Attachment of Security Interest

The Grantor acknowledges and agrees that (i) value has been given, (ii) the Grantor has rights in the Collateral, and (iii) the security interest shall attach to existing Collateral upon execution of this Agreement by the Grantor and to each item of after-acquired Collateral at the time that the Grantor acquires any rights therein.

3. COVENANTS OF THE GRANTOR

3.1 Covenants

The Grantor hereby covenants and agrees with the Secured Party as follows:

- (a) Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.
- (b) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.
- (c) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.
- (d) To deliver to the Secured Party such information concerning the Collateral or the Grantor as the Secured Party may reasonably request from time to time.
- (e) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby and to accomplish the intention of this Agreement.

3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the

Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

4. DEALING WITH COLLATERAL

4.1 Grantor's Rights before Breach

Until the occurrence of a Breach and subject to the terms hereof, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby or the value of the Collateral or which would be inconsistent with or violate the Regulation, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

4.2 General Restrictions

The Grantor shall not, without the prior written consent of the Secured Party:

- (a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business;
- (b) release, surrender or abandon possession of the Collateral or any part thereof; or
- (c) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

4.3 Release by the Secured Party

The Secured Party may, at its discretion but subject to the written approval of the Indenture Trustee, at any time release from the security interest created by this Agreement any part or parts of the Collateral or any other security or any surety for the Statutory Obligation either with or without sufficient consideration therefor without thereby releasing any other part of the Collateral or any person from this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The Grantor hereby represents and warrants to the Secured Party, the matters set out below:

- (a) **Incorporation and Qualifications** – The Grantor is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement.
- (b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The

execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

- (c) **No Other Business Names or Styles** – The Grantor does not carry on business under or use any name or style other than the name(s) specified in Schedule A to this Agreement including.
- (d) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.
- (e) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the Collateral free and clear of any liens other than Permitted Liens.
- (f) **Grantor Information** – Schedule A sets forth (a) the Grantor’s jurisdiction of incorporation, (b) the location of the Grantor’s registered office and business operations and records, and (c) the Grantor’s exact legal name (in English and French).
- (g) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement or in any certificate or other document delivered by or on behalf of the Grantor to or for the benefit of the Secured Party are material, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

6. BREACH AND ENFORCEMENT

6.1 Enforceability of Security

The security hereby constituted shall become enforceable upon the occurrence of any of the following events each of which shall constitute a “**Breach**”:

- (a) the Grantor is in breach of the Statutory Obligation;

- (b) any representation or warranty made or deemed made by or on behalf of the Grantor to the Secured Party under or in connection with this Agreement shall be materially false on the date as of which made; or
- (c) any breach by the Grantor of any of the covenants, terms or provisions of Article 3 of this Agreement.

6.2 Remedies

At any time after the happening of any Breach, the Secured Party shall have the following rights, powers and remedies:

- (a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the “**Receiver**”) of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;
- (b) to make payments to parties having prior charges or encumbrances on the Collateral;
- (c) to preserve, protect and maintain the Collateral;
- (d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;
- (e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;
- (f) to enjoy and exercise all of the rights and remedies of a secured party under the PPSA;
- (g) to notify the account debtors or obligors under any Accounts (other than Excluded Accounts) of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and, upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and
- (h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

6.3 Special Rules re Accounts

After the security hereby constituted becomes enforceable,

- (a) all Money or other form of payment received by the Grantor in respect of all of its Accounts shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and
- (b) the Grantor shall not adjust, settle or compromise the amount or payment of any Accounts, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

6.4 Receiver as Agent

The Receiver shall be deemed to be the agent of the Grantor for the purpose of establishing liability for the acts or omissions of the Receiver and the Secured Party shall not be liable for such acts or omissions and, without restricting the generality of the foregoing, the Grantor hereby irrevocably authorizes the Secured Party to give instructions to the Receiver relating to the performance of its duties as set out herein.

6.5 Expenses of Enforcement

The Grantor shall pay to the Receiver the remuneration of the Receiver and all costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis) properly incurred by the Receiver pursuant to its appointment and the exercise of its powers hereunder, and shall pay to the Secured Party and the Receiver as required all amounts of Money (including interest thereon) borrowed or advanced by either of them pursuant to the powers set out herein, and the obligations of the Grantor to the Secured Party and the Receiver pursuant to this Section 6.5 shall be payable on demand.

6.6 Indulgences and Releases

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor, sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the Statutory Obligation or the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

6.7 No Liability for Failure to Exercise Remedies

The Secured Party and the Receiver shall not be liable or accountable to the Grantor or to any other person for any failure to exercise any of the rights, powers and remedies set out in this Agreement, and shall not be bound to commence, continue or defend proceedings for the purpose of preserving or protecting any rights of the Secured Party, the Receiver, the Grantor or any other party in respect of the same.

6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be applied as follows:

- (a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;
- (b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;
- (c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and
- (d) fourth, in payment of any surplus in accordance with applicable law.

6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

6.10 Restriction on Grantor

Upon the Secured Party taking possession of the Collateral or the appointment of a Receiver, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

6.12 Care by the Secured Party

The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in the Secured Party's possession if it takes such action for

that purpose as the Grantor requests in writing, but failure of the Secured Party to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Secured Party to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Grantor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

6.13 Application by Grantor re: Receiver

The Grantor hereby irrevocably waives its right to make an application to any court with respect to the appointment, powers or remuneration of the Receiver.

7. GENERAL

7.1 Waiver

Any breach by the Grantor of any of the provisions contained in this Agreement or any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

7.2 The Secured Party as Attorney

The Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, after the happening of any Breach, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
[Address]

Attention: ■
 Email: ■
 Facsimile: ■

In the case of the Secured Party:

[Financing Entity]

c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■
Facsimile: ■

7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person (the “**Assignee**”). The Assignee shall, to the extent of the interest so assigned or transferred, be entitled to the benefit of and the right to enforce this Agreement to the same extent as if the Assignee were the Secured Party. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor’s rights, duties or obligations hereunder without the prior written consent of the Secured Party.

7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by all the Parties.

7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

[FINANCING ENTITY], by its Manager,
**ONTARIO POWER GENERATION
INC., as Secured Party**

By: _____
Name:
Title:

By: _____
Name:
Title:

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Grantor**

By: _____
Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

**[INDENTURE TRUSTEE]
as Indenture Trustee**

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
GRANTOR INFORMATION

1. **Grantor's exact legal name: Independent Electricity System Operator**
■ [French]
2. **Grantor's jurisdiction of incorporation: Ontario**
3. **Grantor's registered office address: ■**
4. **Location of Grantor's business operations and records: ■**

[ISSUER]

as Issuer

AND

[INDENTURE TRUSTEE]

as Indenture Trustee

TRUST INDENTURE

DATED AS OF [■], 2017

TABLE OF CONTENTS

	Page
RECITALS OF THE ISSUER.....	1
AGREEMENT OF THE PARTIES	1
ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	1
1.01 Definitions.....	1
1.02 Compliance Certificates and Opinions	2
1.03 Form of Documents Delivered to Indenture Trustee	3
1.04 Actions by Noteholders.....	3
1.05 Actions of Other Specified Creditors.....	6
1.06 Effect of Headings and Table of Contents.....	6
1.07 Successors and Assigns.....	6
1.08 Severability	6
1.09 Governing Law	6
1.10 Counterparts.....	7
1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.....	7
1.12 Non-Business Days.....	7
1.13 Interest Act.....	7
1.14 Currency.....	7
1.15 References to Acts of the Issuer.....	7
1.16 Judgment Currency	8
ARTICLE II COLLATERAL	8
2.01 Security for Obligations Secured.....	8
2.02 Recording, Etc.....	10
2.03 Use of Collateral	11
2.04 Suits To Protect the Collateral	12
2.05 Purchaser Protected.....	12
2.06 Powers Exercisable by Receiver or Indenture Trustee	12
2.07 Determinations Relating to Collateral	12
2.08 Satisfaction and Discharge of Indenture	13
2.09 Release of all Collateral.....	14
2.10 Certain Commercial Law Representations and Warranties	14
ARTICLE III NOTE FORMS.....	15
3.01 Forms Generally.....	15
3.02 Forms of Notes.....	15
3.03 Form of Indenture Trustee’s Certificate of Authentication	16
3.04 Notes Issuable in the Form of a Global Note.....	16
3.05 Temporary Global Notes and Permanent Global Notes	18
3.06 Beneficial Ownership of Global Notes	20

TABLE OF CONTENTS

(continued)

	Page
3.07 Notices to Depository	20
3.08 CUSIP Numbers.....	20
ARTICLE IV THE NOTES.....	21
4.01 General Title, General Limitations, Issuable in Series, Terms of a Series, Class or Tranche of Notes.....	21
4.02 Denominations	24
4.03 Execution, Authentication and Delivery and Dating	24
4.04 Temporary Notes	25
4.05 Registration, Transfer and Exchange.....	25
4.06 Mutilated, Destroyed, Lost and Stolen Notes	29
4.07 Persons Entitled to Payment	30
4.08 Cancellation	31
4.09 Protection of Notes	31
4.10 New Issuances of Notes	31
ARTICLE V CONDITIONS PRECEDENT	32
5.01 Conditions Precedent for Incurrence of Indebtedness	32
5.02 No Consent.....	33
5.03 Conditions Precedent for the Incurrence of other Obligations Secured	34
5.04 Acknowledgements.....	34
ARTICLE VI SUBORDINATION.....	34
6.01 Subordination.....	34
6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations.....	35
6.03 Rights of Specified Creditors Preserved	35
6.04 Renewal or Extension of Senior Funding Obligations	36
ARTICLE VII ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS.....	36
7.01 Available Collections.....	36
7.02 Issuer Accounts.....	36
7.03 Investment of Funds in the Issuer Accounts	39
7.04 Allocation of Amounts on Deposit in the Collection Account	40
7.05 Allocation of Amounts on Deposit in the Other Issuer Accounts	43
7.06 Payments to be Held in Trust.....	44
7.07 Application of Trust Money.....	44
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	44
8.01 Events of Default	44
8.02 Acceleration of Maturity; Rescission and Annulment.....	45

TABLE OF CONTENTS **(continued)**

	Page
8.03 Waiver of Past Defaults	47
8.04 Notice of Defaults	47
8.05 Remedies Generally	48
8.06 Default Interest and Expenses.....	48
8.07 Indenture Trustee May File Proofs of Claim	49
8.08 Indenture Trustee May Enforce Claims Without Possession of Notes.....	49
8.09 Indenture Trustee May Elect to Hold the Collateral	50
8.10 Termination by Indenture Trustee of Manager and Servicer.....	50
8.11 Control by Debtholders.....	50
8.12 Limitation on Suits.....	50
8.13 Application of Money Following an Event of Default	51
8.14 Limited Recourse	53
8.15 Restoration of Rights and Remedies.....	53
8.16 Rights and Remedies Cumulative	53
8.17 Delay or Omission Not Waiver.....	54
8.18 Waiver of Stay or Extension Laws	54
8.19 Indenture Trustee Appointed Attorney	54
8.20 Disclaimer of Marshalling	55
ARTICLE IX THE INDENTURE TRUSTEE.....	55
9.01 Certain Duties and Responsibilities	55
9.02 Certain Rights of Indenture Trustee.....	56
9.03 Not Responsible for Recitals or Issuer Funding Obligations.....	58
9.04 May Hold Notes.....	58
9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity	58
9.06 Corporate Indenture Trustee Required; Eligibility	59
9.07 Resignation and Removal; Appointment of Successor.....	59
9.08 Acceptance of Appointment by Successor	61
9.09 Merger, Conversion, Consolidation or Succession to Business	61
9.10 Trust Indenture Legislation.....	62
9.11 Representations and Covenants of the Indenture Trustee.....	62
9.12 Indenture Trustee’s Application for Instructions from the Issuer.....	62
9.13 Appointment of Co-Trustee or Separate Indenture Trustee.....	63
9.14 Preservation of Information; Communications to Debtholders	64
9.15 Acceptance of Trusts by Indenture Trustee	65
9.16 Paying Agent.....	65
ARTICLE X MEETINGS.....	67
10.01 Conduct of Meetings.....	67
10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution	69
10.03 Extraordinary Resolution.....	71
10.04 Declaration by Chairman of Result of Vote	72

TABLE OF CONTENTS
(continued)

	Page
10.05 Minutes	72
10.06 Signed Instruments.....	72
10.07 Persons Who May Attend	72
10.08 Binding Effect of Resolutions.....	72
10.09 Notes Regarded as Not Outstanding for Certain Purposes	73
ARTICLE XI SUPPLEMENTAL INDENTURES.....	73
11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors.....	73
11.02 Supplemental Indentures and Amendments with Consent of Debtholders	75
11.03 Execution of Amendments and Supplemental Indentures	76
11.04 Effect of Amendments and Supplemental Indentures	76
11.05 Reference in Notes to Supplemental Indentures.....	77
ARTICLE XII REPRESENTATIONS AND WARRANTIES OF THE ISSUER	77
12.01 Representations and Warranties of the Issuer	77
ARTICLE XIII COVENANTS OF THE ISSUER	79
13.01 Payment of Principal and Interest	79
13.02 Use of Proceeds.....	79
13.03 Maintenance of Office or Agency.....	79
13.04 Legal Existence	80
13.05 Separateness Covenants	80
13.06 Compliance with Laws	81
13.07 Performance of Obligations	81
13.08 Funding Obligations.....	81
13.09 Financial Statements	82
13.10 Statement as to Compliance.....	82
13.11 Payment Instruction	82
13.12 Notice of Events of Default	82
13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors.....	83
13.14 Other Positive Covenants.....	83
13.15 Rule 144A Information	84
13.16 Further Instruments and Acts.....	84
13.17 No Other Business	84
13.18 Amendments to Program Agreements	84
13.19 Issuer May Consolidate, Etc., Only on Certain Terms	85
13.20 Successor Substituted.....	86
13.21 Guarantees, Loans, Advances and Other Liabilities	86
13.22 Capital Expenditures	86
13.23 Restricted Payments.....	86

TABLE OF CONTENTS
(continued)

	Page
13.24 No Borrowing	87
13.25 Other Negative Covenants	87
13.26 Indenture Trustee May Perform Covenants	87
ARTICLE XIV MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS.....	88
14.01 Management Agreement	88
14.02 Credit Enhancement Agreements	88
ARTICLE XV NOTICES.....	89
15.01 Notice to Issuer	89
15.02 Notice to the Indenture Trustee.....	89
15.03 Notice to Noteholders	90
15.04 Notice to Other Specified Creditors.....	91
15.05 Notice to Rating Agencies	91
15.06 Change of Address.....	91
ARTICLE XVI MISCELLANEOUS.....	91
16.01 No Petition	91
16.02 U.S. Tax Treatment.....	92
16.03 Alternate Payment Provisions.....	92
16.04 Final Distribution	92
16.05 Force Majeure	93
16.06 Delivery of Executed Copies	93
SCHEDULE A — DEFINED TERMS	
EXHIBIT 1 — FORM OF PAYMENT INSTRUCTIONS	

This **TRUST INDENTURE**, between **[ISSUER]**, a trust formed under the laws of the Province of Ontario (the “**Issuer**”), and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee (the “**Indenture Trustee**”), is made and entered into as of **[■]**, 2017.

RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of Funding Obligations in one or more Series, Classes or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;
- (b) [all other terms used herein which are defined in the Master Transfer and Servicing Agreement, either directly or by reference therein, have the meanings assigned to them therein;]¹
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

¹ **NTD:** Defined terms from Master Transfer and Servicing Agreement to be included in Schedule A. Schedule A will be a master glossary for all Program Agreements.

- (d) unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;
- (e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;
- (f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;
- (g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;
- (h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (i) "including" and words of similar import will be deemed to be followed by "without limitation"; and
- (j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Compliance Certificates and Opinions

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series, Class or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Article V and this Section 1.02, as applicable, in connection with the first authentication of Notes of such Series, Class or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

1.03 Form of Documents Delivered to Indenture Trustee

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

1.04 Actions by Noteholders

- (a) Any request, demand, authorization, direction, notice, consent, waiver or other action (collectively, an “**Action**”) provided by this Indenture to be given or taken by Noteholders of any Series, Class or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. If Notes of a Series, Class or Tranche are issuable in whole or in part as Bearer Notes, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at

any meeting of Noteholders duly called and held in accordance with the provisions of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any notary public or other officer authorized by applicable law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or limited liability company, or a partner of a partnership, on behalf of such corporation, limited liability company or partnership, such certificate or affidavit will also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Indenture Trustee deems sufficient.
- (c)
 - (i) The ownership of Registered Notes will be proved by the Note Register.
 - (ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.
- (d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the

Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

- (e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.
- (f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.
- (g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.
- (h) Without limiting the generality of the foregoing, unless otherwise specified pursuant to Section 4.01 or pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.
- (i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided

in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than 90 days after such record date.

1.05 Actions of Other Specified Creditors

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

1.06 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

1.08 Severability

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

1.09 Governing Law

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

1.10 Counterparts

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

1.12 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.13 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

1.14 Currency

Unless stated otherwise, all amounts herein are stated in Dollars.

1.15 References to Acts of the Issuer

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or

a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

1.16 Judgment Currency

- (a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the “**Original Currency**”) into another currency (the “**Second Currency**”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.
- (b) The term “**rate of exchange**” in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II COLLATERAL

2.01 Security for Obligations Secured

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

- (a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:
 - (i) the Issuer Investment Interest;

- (ii) the Collection Account, the Refinancing Account, each Finance Reserve Account, each Capital Reserve Account and each Supplemental Reserve Account (including all Sub-Accounts of each of the foregoing);
 - (iii) all Eligible Investments and all investment property, money and other property held in the Collection Account, the Refinancing Account, any Finance Reserve Account, any Capital Reserve Account or any Supplemental Reserve Account (including any Sub-Accounts of each of the foregoing);
 - (iv) all rights, benefits and powers of the Issuer under any Program Agreement;
 - (v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;
 - (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;
 - (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;
 - (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;
 - (ix) all amounts received with respect to all of the foregoing; and
 - (x) all proceeds of the foregoing; and
- (b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the **“Collateral”**.

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

2.02 Recording, Etc.

- (a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.
- (b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.
- (c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:
 - (i) grant the Security Interest more effectively in all or any portion of the Collateral;
 - (ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;
 - (iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;
 - (iv) enforce the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;
 - (v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

- (vi) pay all Taxes levied or assessed upon the Collateral when due.
- (d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.
- (e) Without limiting the generality of subsection 2.02(c) or (d):
 - (i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.
 - (ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

2.03 Use of Collateral

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

2.04 Suits To Protect the Collateral

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

2.05 Purchaser Protected

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

2.06 Powers Exercisable by Receiver or Indenture Trustee

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

2.07 Determinations Relating to Collateral

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05). The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

2.08 Satisfaction and Discharge of Indenture

- (a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any Series, Class or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every Series, Class or Tranche of Notes as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.
- (b) This Indenture will cease to be of further effect with respect to any Series, Class or Tranche of Notes (except as to any surviving rights of transfer or exchange of Notes of that Series, Class or Tranche expressly provided for herein or in the form of Note for that Series, Class or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that Series, Class or Tranche, when:
 - (i) all Notes of that Series, Class or Tranche theretofore authenticated and delivered (other than (A) Notes of that Series, Class or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 16.04(b), and (B) Notes of that Series, Class or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section 16.04(b)) have been delivered to the Indenture Trustee canceled or for cancellation;
 - (ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the Notes of that Series, Class or Tranche; and
 - (iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that Series, Class or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Series, Class or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that Series, Class or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections 7.07 and 16.04(b) will survive such satisfaction and discharge.

2.09 Release of all Collateral

- (a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.
- (b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.
- (c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

2.10 Certain Commercial Law Representations and Warranties

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

- (a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other

documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

- (b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).
- (c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.
- (d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

ARTICLE III NOTE FORMS

3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any Series, Class or Tranche, to the rules of any securities exchange on which such Notes are listed.

3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be

evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the Series, Class or Tranche designated therein referred to in the within-mentioned Indenture.

[INDENTURE TRUSTEE], as Indenture Trustee,

By:

Authorized Signatory

Dated:

3.04 Notes Issuable in the Form of a Global Note

- (a) If the Issuer establishes pursuant to Sections 3.02 and 4.01 that the Notes of a particular Series, Class or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such Series, Class or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to [Fair Hydro Trust] (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of

CDS Clearing and Depository Services Inc. (“**CDS**”), to [Fair Hydro Trust] (the “**Issuer**”) or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note”, and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

- (b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.
- (c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:
 - (i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such Series, Class or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such Series, Class or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such Series, Class or Tranche of like tenor and terms in an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.
 - (ii) The Issuer may at any time and in its sole discretion determine that the Notes of any Series, Class or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by

such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such Series, Class or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such Series, Class or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such Series, Class or Tranche or portion thereof in exchange for such Global Note or Notes.

- (iii) If any Event of Default has occurred and is continuing with respect to such Global Notes, and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of that Series advise the Indenture Trustee and the Depository that a Global Note is no longer in the best interest of the Noteholders of that Series, the holders of Global Notes of that Series may exchange such Notes for individual Notes.
- (iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

3.05 Temporary Global Notes and Permanent Global Notes

- (a) If specified in the Related Supplemental Indenture for any Tranche, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the “**Temporary Global Note**”), without interest coupons, in the denomination of the entire aggregate principal amount of such Series, Class or Tranche and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the “**Permanent Global Notes**”).
- (b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for

beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series, Class or Tranche, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series, Class or Tranche of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

- (c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.
- (d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such

Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

3.06 Beneficial Ownership of Global Notes

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

- (a) the Issuer and the Indenture Trustee may deal with the applicable clearing agency or Depository and the clearing agency's or Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and
- (b) the rights of the respective Note Owners will be exercised only through the applicable clearing agency or Depository and the clearing agency's or Depository's participants and will be limited to those established by applicable law and agreements between such Note Owners and the clearing agency or Depository and/or the clearing agency's or Depository's participants. Pursuant to the operating rules of the applicable clearing agency, unless and until Notes in definitive form are issued pursuant to Section 3.04, the clearing agency or the Depository will make book-entry transfers among the clearing agency's or the Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such clearing agency's or Depository's participants.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the clearing agency and the clearing agency's participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes.

3.07 Notices to Depository

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

3.08 CUSIP Numbers

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide

the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

ARTICLE IV THE NOTES

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series, Class or Tranche of Notes

- (a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.
- (b) The Notes may be issued in one or more Series, Classes or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.
- (c) Each Note issued must be part of a Series, Class and Tranche of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A Class or Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.
- (d) Each Series of Notes may, but need not be, subdivided into multiple Classes. Notes belonging to a Class in any Series may be entitled to specified payment priorities over other Classes of Notes in that Series.
- (e) Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If a Series of Notes is subdivided into multiple Classes, the Notes of each Class of such Series shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Class of Notes belong to different Tranches, all Notes of such Class, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the Class of Notes.
- (f) Notes of a Series that belong to different Classes in that Series belong to different Tranches on the basis of the difference in Class membership.
- (g) Each Class of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single Class of a Series will belong to different Tranches if they have different terms and conditions. With respect to any Class of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.
- (h) Before the initial issuance of Notes of each Series, Class or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

- (i) the Series designation;
- (ii) the Stated Principal Amount of the Notes;
- (iii) whether such Notes are of a particular Class of Notes or a Tranche of a Class of Notes;
- (iv) the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;
- (v) if the principal of or interest, if any, on such Notes are to be payable, at the election of the Issuer or a Noteholder, in a currency or currencies other than that in which the Notes are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;
- (vi) if the amount of payments of principal of or interest, if any, on such Notes may be determined with reference to an index based on (A) a currency or currencies other than that in which the Notes are stated to be payable, (B) changes in the prices of one or more other securities or indexes of securities or (C) changes in the prices of one or more commodities or indexes of commodities, or any combination of the foregoing, the manner in which such amounts will be determined;
- (vii) the price or prices at which such Series, Class or Tranche of Notes will be issued;
- (viii) the times at which such Series, Class or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;²
- (ix) the rate per annum at which such Series, Class or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;
- (x) each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series, Class or Tranche of Notes;
- (xi) the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific

² To confirm whether optional or mandatory redemption is possible. If not, a specific provision prohibiting it will be included.

Dollar Principal Amount, as applicable, of such Series, Class or Tranche of Notes;

- (xii) whether or not application will be made to list such Series, Class or Tranche of Notes on any securities exchange;
- (xiii) any Events of Default with respect to such Series, Class or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series, Class or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series, Class or Tranche);
- (xiv) if such Series, Class or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;
- (xv) if such Series, Class or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series, Class or Tranche of Notes are to be issued with or without coupons or both;
- (xvi) the subordination of such Series, Class or Tranche of Notes to any other indebtedness of the Issuer, including without limitation, the Notes of any other Series, Class or Tranche;
- (xvii) if such Series, Class or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;
- (xviii) if such Series, Class or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;
- (xix) the Record Date for any Payment Date of such Series, Class or Tranche of Notes, if different from the last day of the month before the related Payment Date;
- (xx) the details of any accumulation period for such Series, Class or Tranche of Notes and the amount scheduled to be deposited in a Capital Reserve Account, if any, on each Payment Date during such accumulation period;
- (xxi) whether and under what conditions, additional amounts will be payable to Noteholders of such Series, Class or Tranche; and
- (xxii) any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

- (i) The Notes of each Series, Class or Tranche will be distinguished from the Notes of each other Series, Class or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.
- (j) Any terms or provisions in respect of the Notes of any Series, Class or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

4.02 Denominations

The Notes of each Series, Class or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series, Class or Tranche, the Registered Notes of that Series, Class or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series, Class or Tranche, the Bearer Notes of that Series, Class or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

4.03 Execution, Authentication and Delivery and Dating

- (a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.
- (b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.
- (c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.
- (d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series, Class or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

- (e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.
- (f) Unless otherwise provided in the form of Note for any Series, Class or Tranche, all Notes will be dated the date of their authentication.
- (g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

4.04 Temporary Notes

- (a) Pending the preparation of definitive Notes of any Series, Class or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.
- (b) If temporary Notes of any Series, Class or Tranche are issued, the Issuer will cause definitive Notes of such Series, Class or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series, Class or Tranche will be exchangeable for definitive Notes of such Series, Class or Tranche upon surrender of the temporary Notes of such Series, Class or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series, Class or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series, Class or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series, Class or Tranche.

4.05 Registration, Transfer and Exchange

- (a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of Registered Notes of a particular Series, Class or Tranche, and for transfers of Registered Notes or of Registered Notes of such Series, Class or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information

contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

- (b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any Series, Class or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such Series, Class or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.
- (c) Subject to Section 3.04, at the option of the Noteholder, Notes of any Series, Class or Tranche may be exchanged for other Notes of such Series, Class or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same Series, Class and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.
- (d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.
- (e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.
- (f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum

sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

- (g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any Series, Class or Tranche during a period beginning at the opening of business 15 days before the day of selection of Notes of such Series, Class or Tranche to be redeemed and ending at the close of business on (A) if Notes of such Series, Class or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such Series, Class or Tranche so selected for redemption or (B) if Notes of the Series, Class or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the Series, Class or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.
- (h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.
- (i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.
- (j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any Series, Class or Tranche of Notes issued under this Indenture.
- (k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES**”

ACT”), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

- (l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or

non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code (“**Similar Law**”); or (ii) (A) the Note is rated at least “BBB-” or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

4.06 Mutilated, Destroyed, Lost and Stolen Notes

- (a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, Series, Class or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.
- (b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.
- (c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.
- (d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same Series, Class or Tranche duly issued hereunder.
- (e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

4.07 Persons Entitled to Payment

- (a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).
- (b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.
- (c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.
- (d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.
- (e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.
- (f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.
- (g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so) to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors

pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

4.08 Cancellation

All Notes surrendered for payment, redemption, transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

4.09 Protection of Notes

- (a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.
- (b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

4.10 New Issuances of Notes

- (a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding Class or Tranche of a Series of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding Class or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that Class or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a Class or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a Class or Tranche of Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit of the additional Notes. Furthermore, the targeted

deposits, if any, to any applicable Issuer Account, will be increased proportionately to reflect the principal amount of the additional Notes.

- (b) When issued, the additional Notes of a Class or Tranche will be identical in all respects to the other Outstanding Notes of that Class or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related Supplemental Indenture as the other Outstanding Notes of that Class or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

ARTICLE V

CONDITIONS PRECEDENT

5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

- (a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;
- (b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:
 - (i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;
 - (ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;
 - (iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;
 - (iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;
 - (v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and
 - (vi) such other matters as the Indenture Trustee may reasonably request;

- (c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;
- (d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;
- (e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable Class or Tranche of Notes;
- (f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;
- (g) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;
- (h) in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;
- (i) in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code), then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and
- (j) in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

5.02 No Consent

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

5.03 Conditions Precedent for the Incurrence of other Obligations Secured

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

- (a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and
- (b) each counterparty to such agreement (or an authorized agent on their behalf) shall
 - (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

5.04 Acknowledgements

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

ARTICLE VI SUBORDINATION

6.01 Subordination

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to

Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations

- (a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.
- (b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

6.03 Rights of Specified Creditors Preserved

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

6.04 Renewal or Extension of Senior Funding Obligations

- (a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.
- (b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

ARTICLE VII

ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

7.02 Issuer Accounts

- (a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the “**Collection Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall

transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the “Collection Account”.

- (b) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the “**Refinancing Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the “Refinancing Account”
- (c) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a “**Capital Reserve Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors at such time shall be credited to a Capital Reserve Account, to the extent that there is a requirement for funds in such Capital Reserve Account, in accordance with the terms of any applicable Funding Obligation Agreement and Section 7.04. Each Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Capital Reserve Account. From the date

each such new Capital Reserve Account is established, it shall be a “Capital Reserve Account”.

- (d) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a “**Finance Reserve Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for one or more Series or Classes of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Finance Reserve Account, to the extent that there is a requirement for funds in such Finance Reserve Account, in accordance with the terms of any applicable Funding Obligation Agreement and Section 7.04. Each Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Finance Reserve Account. From the date each such new Finance Reserve Account is established, it shall be a “Finance Reserve Account”.
- (e) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause the Indenture Trustee to establish one or more Eligible Deposit Accounts denominated as “**Supplemental Reserve Accounts**” in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Supplemental Reserve Account may be established for such other purposes not prohibited by this Indenture as the Issuer may deem necessary or desirable from time to time. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Supplemental Reserve Account, to the extent that there is a requirement for funds in such Supplemental Reserve Account, in accordance with the terms of the any applicable Funding Obligation Agreement and Section 7.04. Each Supplemental Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Supplemental Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to

exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Supplemental Reserve Account, as applicable, that is an Eligible Deposit Account and shall transfer any funds or other property from such Supplemental Reserve Account to such new Supplemental Reserve Account. From the date each such new Supplemental Reserve Account is established, it shall be a “Supplemental Reserve Account”.

7.03 Investment of Funds in the Issuer Accounts

- (a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.
- (b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.
- (c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.
- (d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections 7.04 and 7.05.
- (e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.
- (f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided,

however, that such funds shall remain uninvested upon the occurrence of any of the following events:

- (i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or
- (ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

7.04 Allocation of Amounts on Deposit in the Collection Account

- (a) All Senior Funding Obligations of each Series, Class or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series, Class or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series, Class or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series, Class or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, or (iii) the Principal Payment Default Date of the Junior Subordinated Funding Obligations of such Series, Class or Tranche, except as specified in the Related Funding Obligation Agreement.
- (b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).
- (c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

- (d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.
- (e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:
 - (i) First, (A) to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; and then (B) to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of [**■ percent (■%)**]³ of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;
 - (ii) Second, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;
 - (iii) Third, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account in accordance with the terms of any Related Funding Obligation Agreement, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;
 - (iv) Fourth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any other Issuer Account as required by any Related Funding Obligation Agreement, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;
 - (v) Fifth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

³ To be confirmed.

- (vi) Sixth, to the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (i);
- (vii) Seventh, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;
- (viii) Eighth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;
- (ix) Ninth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;
- (x) Tenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;
- (xi) Eleventh, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;
- (xii) Twelfth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Junior Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;
- (xiii) Thirteenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Junior Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;
- (xiv) Fourteenth, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

- (xv) Fifteenth, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than \$100 in any Monthly Period; and
- (xvi) Sixteenth, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

7.05 Allocation of Amounts on Deposit in the Other Issuer Accounts

- (a) Subject to clause (b) below, if, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date: (i) amounts on deposit in any Issuer Account, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations, may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (iii); (ii) amounts on deposit in any Issuer Account related solely to Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (ix); and (iii) amounts on deposit in any Issuer Account related solely to Junior Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (xii).
- (b) Notwithstanding anything to the contrary contained herein but subject to Section 8.13:
 - (i) amounts on deposit in the Refinancing Account may only be withdrawn from the Refinancing Account for the purpose of repaying the principal amount of Issuer Funding Obligations which are due and payable and interest thereon; and
 - (ii) amounts on deposit in an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations may only be withdrawn from such Issuer Account for the purpose for which such Issuer Account was established and allocated only to those Specified Creditors for whom such Issuer Account was established.

7.06 Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

7.07 Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES⁴

8.01 Events of Default

“**Event of Default**,” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

- (a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of 65 days following the date on which such interest became due and payable;
- (b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;
- (c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of 90 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of

⁴ Subject to ongoing discussions.

all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a “Notice of Default” hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 90-day period;

- (d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of 90 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a “Notice of Default” hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 90-day period;
- (e) an Insolvency Event in respect of the Issuer;
- (f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within 90 days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;
- (g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or
- (h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

8.02 Acceleration of Maturity; Rescission and Annulment

- (a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not

less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

- (b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will automatically and immediately be obligated to pay off the Issuer Funding Obligations.
- (c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:
 - (i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and
 - (ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.
- (d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as

though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

- (e) No such rescission will affect any subsequent default or impair any right consequent thereon.

8.03 Waiver of Past Defaults

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

8.04 Notice of Defaults

- (a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:
 - (i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;
 - (ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;
 - (iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and
 - (iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

- (b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

8.05 Remedies Generally

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

8.06 Default Interest and Expenses

The Issuer covenants that if:

- (a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or
- (b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial

proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

8.07 Indenture Trustee May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and
- (b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

8.08 Indenture Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or the Notes of any Series, Class or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such Series, Class or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

8.09 Indenture Trustee May Elect to Hold the Collateral

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

8.10 Termination by Indenture Trustee of Manager and Servicer

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

8.11 Control by Debtholders

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

- (a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and
- (b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

8.12 Limitation on Suits

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

- (a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;
- (b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;
- (c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably

satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

- (d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

- (a) First, to (A) the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; and then to (B) the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of [■ percent (■%)]⁵ of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;
- (b) [Second], to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;
- (c) Third, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;]⁶
- (d) Fourth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

⁵ To be confirmed.

⁶ Subject to ongoing discussion.

- (e) Fifth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;
- (f) Sixth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;
- (g) Seventh, to the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (a);
- (h) Eighth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;
- (i) Ninth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;
- (j) Tenth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;
- (k) Eleventh, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;
- (l) Twelfth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;
- (m) Thirteenth, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party; and
- (n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations (which, for greater certainty, shall not include the Refinancing Account) shall first be used to satisfy all

obligations owing to those Specified Creditors for whom such Issuer Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

8.14 Limited Recourse

- (a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.
- (b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).
- (c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

8.15 Restoration of Rights and Remedies

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

8.16 Rights and Remedies Cumulative

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or

otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

8.17 Delay or Omission Not Waiver

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

8.18 Waiver of Stay or Extension Laws

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

8.19 Indenture Trustee Appointed Attorney

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

- (a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;
- (b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and
- (c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

8.20 Disclaimer of Marshalling

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

ARTICLE IX THE INDENTURE TRUSTEE

9.01 Certain Duties and Responsibilities

- (a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.
- (b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
- (c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).
- (d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
 - (i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);
 - (ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;
 - (iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary

Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

- (iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.
- (e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

9.02 Certain Rights of Indenture Trustee

Except as otherwise provided in Section 9.01:

- (a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;
- (c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
- (d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- (e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the

Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

- (f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;
- (g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;
- (h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;
- (i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;
- (j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;
- (k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;
- (l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the

security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

- (m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

9.03 Not Responsible for Recitals or Issuer Funding Obligations

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

9.04 May Hold Notes

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity

- (a) The Issuer agrees:
 - (i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as [Indenture Trustee] is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
 - (ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and
 - (iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted

by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

- (b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

9.06 Corporate Indenture Trustee Required; Eligibility

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

9.07 Resignation and Removal; Appointment of Successor

- (a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.
- (b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.
- (c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.
- (d) If at any time:
 - (i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

- (ii) the Indenture Trustee becomes incapable of acting, or
- (iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

- (e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.
- (f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

- (g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.
- (h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

9.08 Acceptance of Appointment by Successor

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

9.09 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

9.10 Trust Indenture Legislation

- (a) In this Article IX, the term “**applicable legislation**” means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.
- (b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.
- (c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

9.11 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

- (a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;
- (b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;
- (c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and
- (d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

9.12 Indenture Trustee’s Application for Instructions from the Issuer

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any

action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

9.13 Appointment of Co-Trustee or Separate Indenture Trustee

- (a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Issuer's property may at the time be located, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.
- (b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:
 - (i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;
 - (ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and
 - (iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

- (c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.
- (d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

9.14 Preservation of Information; Communications to Debtholders

- (a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).
- (b) If three or more Debtholders of any Series, Class or Tranche (hereinafter referred to as “**applicants**”) (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such Series, Class or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

- (i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or
- (ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable Series, Classes and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

- (c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

9.16 Paying Agent

- (a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection

Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

- (b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.
- (c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:
 - (i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;
 - (ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;
 - (iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;
 - (iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;
 - (v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and
 - (vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on

any amounts contemplated under this Indenture of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

- (d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least \$50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

ARTICLE X MEETINGS

10.01 Conduct of Meetings

Meetings of Debtholders of any Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

- (a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, convene a meeting of the Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.
- (b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the Series, Class or Tranche to which such meeting relates, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, and to the Issuer, unless the meeting has been called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary

to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

- (c) At any meeting of the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, then and there represented in person or by proxy and entitled to vote at such meeting.
- (d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.
- (e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every \$1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every \$1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall

be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution

- (a) In addition to any powers hereinbefore given, Debtholders of a Series, Class or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:
 - (i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such Series, Class or Tranche or by the Related Funding Obligation Agreement;
 - (ii) sanction, insofar as they apply to the Series, Class or Tranche, the release of the Issuer from its covenants and obligations hereunder;
 - (iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such Series, Class or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such Series, Class or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;
 - (iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the Series, Class or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized by such Ordinary Resolution; provided that no such assent shall be necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

- (v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a Series, Class or Tranche of Issuer Funding Obligations.
- (b) In addition to any powers hereinbefore given, Debtholders of all Controlling Class Obligations shall by Extraordinary Resolution have the power to:
- (i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;
 - (ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;
 - (iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;
 - (iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;
 - (v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;
 - (vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all Series of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;
 - (vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations,

to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

- (viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;
 - (ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and
 - (x) permit the creation of any Lien on the Collateral that is prior to the Security Interest (other than Permitted Liens).
- (c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

10.03 Extraordinary Resolution

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

10.04 Declaration by Chairman of Result of Vote

At any meeting of the Debtholders of any Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

10.05 Minutes

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

10.06 Signed Instruments

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

10.07 Persons Who May Attend

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

10.08 Binding Effect of Resolutions

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a Series, Class or Tranche, of all

Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, will be binding upon all of the Debtholders of such Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

10.09 Notes Regarded as Not Outstanding for Certain Purposes

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular Series, Class or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that Series, Class or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that Series, Class or Tranche.

ARTICLE XI SUPPLEMENTAL INDENTURES

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

- (a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or
- (b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all Series, Class or Tranche of Issuer Funding Obligations; or
- (c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

- (d) to provide for the issuance of any Series, Class or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Series, Class or Tranche; or
- (e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or
- (f) to add any additional Events of Default in respect of any or all Series, Class or Tranche of Issuer Funding Obligations; or
- (g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or
- (h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or
- (i) to provide for additional or alternative forms of Credit Enhancement for any Series, Class or Tranche of Issuer Funding Obligations; or
- (j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or
- (k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or
- (l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture

Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

11.02 Supplemental Indentures and Amendments with Consent of Debtholders

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each Series, Class or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such Series, Class or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

- (a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;
- (b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the Adjusted Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

- (c) reduce the amount of a Discount Note payable upon its acceleration;
- (d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any Series, Class or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;
- (e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;
- (f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or
- (g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Series, Class or Tranche of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such Series with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other Series, Class or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

11.03 Execution of Amendments and Supplemental Indentures

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section 9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

11.04 Effect of Amendments and Supplemental Indentures

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each Series, Class or Tranche of Issuer Funding Obligations

affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

ARTICLE XII REPRESENTATIONS AND WARRANTIES OF THE ISSUER

12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular Series, Class or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

- (a) The Issuer is a Financing Entity.
- (b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.
- (c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.
- (d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in

effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

- (e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.
- (f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.
- (g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.
- (h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.
- (i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in

connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

ARTICLE XIII COVENANTS OF THE ISSUER

13.01 Payment of Principal and Interest

With respect to each Series, Class or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the Refinancing of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more Series, Classes or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any Series, Class or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints

the [■]⁷, as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

13.04 Legal Existence

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

13.05 Separateness Covenants

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

- (a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);
- (b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;
- (c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;
- (d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;
- (e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;
- (f) [prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;]⁸
- (g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;
- (h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

⁷ OPG to confirm.

⁸ To discuss financial statement requirements.

- (i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;
- (j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and
- (k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

13.06 Compliance with Laws

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

13.07 Performance of Obligations

- (a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.
- (b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.
- (c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

13.08 Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

13.09 Financial Statements

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited [**consolidated financial statements of the Issuer**] for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, [**unaudited consolidated financial statements of the Issuer**] for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.⁹

13.10 Statement as to Compliance

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

- (a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and
- (b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year, or, if there has been a material default in the fulfillment of any such condition or covenant (without regard to any grace period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

13.11 Payment Instruction

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

13.12 Notice of Events of Default

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

⁹ To discuss financial statement requirements.

13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors

- (a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:
 - (i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such Series, Classes or Tranches as of such date, and
 - (ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.
- (b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

13.14 Other Positive Covenants

The Issuer will:

- (a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;
- (b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;
- (c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-

renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

- (d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

13.15 Rule 144A Information

For so long as Notes of any Series, Class or Tranche are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to provide to any Noteholder of such Series, Class or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

13.16 Further Instruments and Acts

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

13.17 No Other Business

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

13.18 Amendments to Program Agreements

- (a) The Issuer will not:

- (i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or
 - (ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.
- (b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

13.19 Issuer May Consolidate, Etc., Only on Certain Terms

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a “**transaction**”), unless:

- (a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an “investment company” under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;
- (b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

- (c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;
- (d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and
- (e) any action that is necessary to maintain the Security Interest shall have been taken.

13.20 Successor Substituted

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

13.21 Guarantees, Loans, Advances and Other Liabilities

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

13.22 Capital Expenditures

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

13.23 Restricted Payments

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if

the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

13.24 No Borrowing

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

13.25 Other Negative Covenants

The Issuer will not:

- (a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);
- (b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;
- (c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;
- (d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;
- (e) release any security or guarantee in respect of the Collateral;
- (f) voluntarily dissolve or liquidate; or
- (g) take any action that would cause it to be treated as engaged in a “trade or business within the United States” within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

13.26 Indenture Trustee May Perform Covenants

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with

money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

ARTICLE XIV

MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

ARTICLE XV NOTICES

15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

[Issuer]

c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Issuer Trustee], in its capacity as Issuer Trustee for **[Issuer]**

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

15.02 Notice to the Indenture Trustee

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

[Indenture Trustee]

[Address]

Attention: [■]

Fax: [■]

15.03 Notice to Noteholders

- (a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.
- (b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any Series, Class or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.
- (c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.
- (d) With respect to any Series, Class or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series, Class or Tranche.
- (e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

15.06 Change of Address

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

ARTICLE XVI MISCELLANEOUS

16.01 No Petition

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

16.02 U.S. Tax Treatment

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

16.03 Alternate Payment Provisions

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

16.04 Final Distribution

- (a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any Series, Class or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such Series, Class or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such Series, Class or Tranche specifying (i) the date upon which final payment of such Series, Class or Tranche will be made upon presentation and surrender of Notes of such Series, Class or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.
- (b) Notwithstanding a final distribution to the Noteholders of any Series, Class or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any Issuer Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final

distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any Issuer Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

16.05 Force Majeure

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

16.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Indenture.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

[ISSUER], as Issuer

By: **ONTARIO POWER GENERATION
INC.**, not in its individual capacity but
solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

[INDENTURE TRUSTEE], as Indenture
Trustee and not in its individual capacity

By: _____
Name:
Title:

Schedule A

DEFINED TERMS

“Act” means *Ontario Fair Hydro Act, 2017*.

“Action” has the meaning specified in Section 1.04.

“Adjusted Outstanding Dollar Principal Amount” means, at any time with respect to any Series, Class or Tranche of Notes, the Outstanding Dollar Principal Amount of all Outstanding Notes of such Series, Class or Tranche at such time, less any funds on deposit in any Issuer Account or the related Sub-Account, as applicable, for the benefit of such Series, Class or Tranche at such time.

“Adverse Effect” means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default, (b) materially adversely affect the amount or timing of payments to be made to the Specified Creditors pursuant to this Indenture or any Program Agreement, or (c) adversely affect the Security Interest unless otherwise permitted by this Indenture.

“Affected Party” has the meaning specified in the applicable Derivative Agreement.

“Affiliate” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, **“control”** when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms **“controlling”** and **“controlled”** have meanings correlative to the foregoing.

“Agency Agreement” means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

“Authorized Newspaper” means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any Series, Class or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

“Available Collections” means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section [3.3] of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in the Collection Account, any Finance Reserve Account and any Capital Reserve Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; and (b) the IESO Carrying Cost Payments.

“Bearer Note” means a Note in bearer form.

“Benefit Plan” means an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a “plan” described in and subject to Section 4975 of the Code, or an entity whose underlying assets include “plan assets” by reason of an employee benefit plan’s investment in the entity.

“Borrowing” means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

“Business Day” means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by applicable law, regulation or executive order to be closed, or (b) for purposes of any particular Series, Class or Tranche of Notes, any other day specified in the applicable Supplemental Indenture.

“Canadian Depository” means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes of any Tranche issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

“Capital Reserve Account” has the meaning specified in subsection 7.02(c).

“Certificate of Authentication” means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

“Chairman” has the meaning specified in subsection 10.01(d).

“Change of Law Protection Agreement” means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

“Class” means, with respect to any Issuer Funding Obligation, the class specified in the Related Funding Obligation Agreement.

“Closing Date”, with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

“Collateral” has the meaning specified in Section 2.01.

“Collection Account” has the meaning specified in subsection 7.02(a).

“Commission” means the U.S. Securities and Exchange Commission.

“Controlling Class Obligations” means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such

time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

“Co-Owner Agreement” means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

“Corporate Trust Office” means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at [■]; Telephone: [■]; Facsimile: [■], or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

“Credit Enhancement” means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as “Credit Enhancement” for purposes hereof.

“Credit Enhancement Agreement” means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

“Credit Enhancer” means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

“DBRS” means DBRS Limited, or any successor thereof.

“Debtholder” means a Noteholder or a Lender.

“Declaration of Trust” means the declaration of trust made as of [■], 2017 under which the Issuer was established.

“Defaulting Party” has the meaning specified in the applicable Derivative Agreement.

“Depository” means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

“Derivative Agreement” means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

“Derivative Counterparty” means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

“Derivative Funding Obligations” means Funding Obligations arising under, or in connection with, Derivative Agreements.

“Discount Note” means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

“Dollar,” “\$” or “Cdn. \$” means Canadian dollars.

“Electronic Methods” means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

“Eligible Deposit Account” means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

“Eligible Institution” means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

“Eligible Investments” means instruments or investment property that evidence:

- (a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;
- (b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers’ acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least “A-1” and “P-1” (or their equivalents) by each of S&P and Moody’s and, if DBRS provides a rating thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

- (c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least “A-1” and “P-1” (or their equivalents) by each of S&P and Moody’s or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;
- (d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody’s, S&P and DBRS, if rated by DBRS;
- (e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;
- (f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:
 - (i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this definition as a “broker/dealer”), the unsecured short-term debt obligations of which are rated at least “P-1” by Moody’s, “A-1+” by S&P and, if DBRS provides a rating thereon, “R-1” by DBRS at the time of entering into such repurchase obligation; or
 - (ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least “P-1” by Moody’s, “A-1+” by S&P and, if DBRS provides a rating thereon, “R-1” by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and
- (g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be “Eligible Investments” unless the issuer thereof has either a short-term unsecured debt rating of at least “P-1” from Moody’s or a long-term unsecured debt rating of at least “A1” from Moody’s and also has a long-term unsecured debt rating of at least “A” from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to 3 months shall be “Eligible Investments” unless the issuer thereof has a long-term unsecured debt rating of at least “A1” from Moody’s and a short-term unsecured debt rating of at least “P-1” from Moody’s; and (3) no securities or investments described in clauses (b) through (d) above that have

maturities of more than 3 months shall be “Eligible Investments” unless the issuer thereof has a long-term unsecured debt rating of at least “A1” from Moody’s and a short-term unsecured debt rating of at least “P-1” from Moody’s.

“**ERISA**” means the *Employee Retirement Income Security Act* of 1974, as amended.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Date**” means, with respect to any Series, Class or Tranche of Notes, the latest of:

- (a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;
- (b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and
- (c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

“**Extraordinary Resolution**” means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

“**Fair Allocation Amount**” has the meaning ascribed to the term “fair allocation amount” in the Act as of the date of this Indenture.

“**Finance Amount**” has the meaning ascribed to the term “finance amount” in the Act as of the date of this Indenture.

“**Finance Reserve Account**” has the meaning specified in subsection 7.02(d).

“**Financing Entity**” has the meaning ascribed to the term “financing entity” in the Act as of the date of this Indenture.

“**Financing Plan**” has the meaning ascribed to the term “financing plan” in the Act as of the date of this Indenture.

“**Foreign Currency**” means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

“**Foreign Currency Note**” means a Note denominated in a Foreign Currency.

“Foreign Depository” means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

“Funding Obligation Agreement” means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

“Funding Obligations” has the meaning ascribed to the term “funding obligations” in the Act as of the date of this Indenture.

“Global Note” means any Note issued pursuant to Section 3.04.

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“IESO” means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

“IESO Carrying Cost Payments” means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

“IESO Security Agreement” means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

“Income Tax Act” means the *Income Tax Act* (Canada).

“Indenture” or **“this Indenture”** means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

“Indenture Trustee” means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Indenture Trustee” means and includes such Person.

“Initial Currency Specific Dollar Principal Amount” means with respect to a Class or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

“Initial Dollar Principal Amount” means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a Series, Class or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such Series, Class or Tranche plus the aggregate initial principal amount of any additional Notes of such Series, Class or Tranche, and (b) with respect to a Series, Class or Tranche of Discount Notes or that includes Foreign Currency Notes,

the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

“Insolvency Event” means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended.

“Investment Asset” has the meaning ascribed to the term “investment asset” in the Act as of the date of this Indenture.

“Investment Company Act” means the United States Investment Company Act of 1940, as amended.

“Investment Interest” has the meaning ascribed to the term “investment interest” in the Act as of the date of this Indenture.

“Issuer” has the meaning specified in the first paragraph of this Indenture.

“Issuer Accounts” means, collectively, the Collection Account, the Refinancing Account, all Finance Reserve Accounts, all Capital Reserve Accounts and all Supplemental Reserve Accounts, including any Sub-Accounts thereof.

“Issuer Certificate” means a certificate (including an Officer’s Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series, Class or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

“Issuer Funding Obligations” means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

“Issuer Investment Interest” means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and,

upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

“Issuer Trustee” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time.

“Junior Subordinated Borrowings” means Borrowings that have been designated as “Junior Subordinated Borrowings” in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

“Junior Subordinated Funding Obligations” means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

“Junior Subordinated Notes” means Notes of a Series or Class that have been designated as “Junior Subordinated Notes” in the Related Supplemental Indenture.

“Lender” means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

“Lien” means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

“Liquidity Agreement” means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a “Liquidity Agreement” for the purposes hereof.

“Loan Agreement” means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

“Management Agreement” means the management agreement dated [■], 2017 between the Manager and the Issuer.

“Manager” means OPG, in its capacity as manager of the Issuer under the Management Agreement.

“Master Transfer and Servicing Agreement” means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

“Monthly Period” means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial

Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

“Monthly Report” has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

“Moody’s” means Moody’s Investors Service, Inc., or any successor thereof.

“Non-resident” means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

“Note” or **“Notes”** means any note or notes of any Series, Class or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

“Noteholder” means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

“Note Owner” means the beneficial owner of an interest in a Global Note.

“Note Purchase Agreement” means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

“Note Register” has the meaning specified in subsection 4.05(a).

“Note Registrar” means the Person who keeps the Note Register.

“Obligations Secured” means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust).

“Officer’s Certificate” means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer’s knowledge and belief.

“OPG” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

“Opinion of Counsel” means one or more written opinions of counsel, who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel, which counsel shall be reasonably acceptable to the party

receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party.

“Ordinary Resolution” has the meaning specified in subsection 10.01(e).

“Outstanding” means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

- (a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;
- (b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and
- (c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to “Notes” will be deemed to be references to “Outstanding Notes”. In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee’s right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

“Outstanding Currency Specific Dollar Principal Amount” means at any time, with respect to any Class or Tranche of Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such Class or Tranche at such time, less the amount of any withdrawals from any Issuer Account or Sub-Account for such Class or Tranche of Notes for payment of principal to the holders of such Class or Tranche of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such Class or Tranche of Notes due to the issuance of additional Notes of such Class or Tranche pursuant to Article V.

“Outstanding Dollar Principal Amount” means at any time:

- (a) in respect of Notes, either:
 - (i) with respect to any Series, Class or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such Series, Class or Tranche at such time, less the amount of any withdrawals from any Issuer Account or Sub-Account for such Series, Class or Tranche of Notes for payment of principal to the holders of such Series, Class or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or
 - (ii) with respect to any Series, Class or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series, Class or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series, Class or Tranche or the applicable Derivative Counterparty and accretions of principal, each pursuant to the Related Supplemental Indenture;
- plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such Series, Class or Tranche of Notes due to the issuance of additional Notes of such Series, Class or Tranche pursuant to Article V; and
- (b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

“Paying Agent” means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

“Payment Date” means, with respect to any Series of Issuer Funding Obligations, the 15th day of each calendar month or the date otherwise specified in the Related Funding Obligation Agreement.

“Payment Instruction” means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

“Permanent Global Note” has the meaning specified in subsection 3.05(a).

“Permitted Liens” means:

- (a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;
- (b) the Lien of any Indenture Trustee, as provided in Section 9.05; and

(c) the Security Interest.

“Person” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“Place of Payment” means, with respect to any Series, Class or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such Series, Class or Tranche of Notes in accordance with the provisions of Article V.

“PPSA” shall mean the *Personal Property Security Act* (Ontario).

“Predecessor Notes” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

“Principal Payment Default Date” has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

“Principal Payment Due Date” has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

“Program Agreements” means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

“Province” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

“Rating Agency” means, with respect to any Outstanding Series, Class or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

“Rating Agency Condition” means, unless otherwise specified in the Related Supplemental Indenture for any Series, Class or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any Outstanding Notes immediately before the taking of such action, or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer

in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

“Record Date” means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

“Reference Period” has the meaning ascribed to the term “reference period” in the Act as of the date of this Indenture.

“Refinancing” has the meaning ascribed to the term “refinancing” in the Act as of the date of this Indenture.

“Refinancing Account” has the meaning specified in subsection 7.02(b).

“Registered Note” means a Note issued in registered form.

“Registered Noteholder” means a Noteholder of a Registered Note.

“Regulation AB” means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

“Related” is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

- (a) **“Credit Enhancement Agreement”**: a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;
- (b) **“Funding Obligation Agreements”**: the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;
- (c) **“Liquidity Agreement”**: a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a Class or Tranche of such Issuer Funding Obligations constituting Notes;

- (d) “Loan Agreement”: a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and
- (e) “Supplemental Indenture”: a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

“**Responsible Officer**” means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) the Indenture Trustee, any officer within the Corporate Trust Office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer’s knowledge and familiarity with the particular subject).

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

“**Securities Exchange Act**” means the United States Securities Exchange Act of 1934, as amended from time to time.

“**Security Interest**” means the Lien granted pursuant to Section 2.01.

“**Senior Borrowings**” means Borrowings that have been designated as “Senior Borrowings” in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

“**Senior Funding Obligations**” means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

“**Senior Notes**” means Notes of a Series or Class that have been designated as “Senior Notes” in the Related Supplemental Indenture.

“**Series**” means, with respect to any Issuer Funding Obligation, the Series specified in the Related Funding Obligation Agreement.

“**Servicer**” has the meaning specified in the Master Transfer and Servicing Agreement.

“**Servicer Default**” has the meaning ascribed thereto in Section [7.1] of the Master Transfer and Servicing Agreement.

“**Specified Creditors**” means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

“Stated Principal Amount,” has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

“Sub-Account” means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

“Subordinated Borrowings” means Borrowings that have been designated as “Subordinated Borrowings” in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

“Subordinated Funding Obligations” means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

“Subordinated Notes” means Notes of a Series or Class that have been designated as “Subordinated Notes” in the Related Supplemental Indenture.

“Supplemental Indenture” means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any Classes and Tranches of Notes belonging to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

“Supplemental Reserve Account” means the trust account or accounts designated as such and established pursuant to subsection 7.02(e).

“Tax” has the meaning ascribed to the term “tax” in the regulations promulgated under the Act [as of the date of this Indenture.].

“Temporary Global Note” has the meaning specified in Section 3.05(a).

“Termination Payment” has the meaning specified in the applicable Derivative Agreement.

“Terms Document” means, with respect to any Class or Tranche of Notes, a supplement to the Related Supplemental Indenture.

“Tranche” means, with respect to any Class of Notes, Notes of such Class which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

“Underwriting Agreement” means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

“United States Person” means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

“U.S. Depository” means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes of any Tranche issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

“U.S. Securities Act” means the United States Securities Act of 1933, as amended from time to time.

“Warehouse Facility Agreement” means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

EXHIBIT 1
FORM OF PAYMENT INSTRUCTIONS

See Attached.

ISDA®

International Swaps Dealers Association, Inc.

SCHEDULE to the 1992 Master Agreement

dated as of [■], 2017

between

[HEDGE PROVIDER]
(“Party A”),

and

[ISSUER]
(“Party B”)

Part 1 Termination Provisions.

(a) **“Specified Entity”** means in relation to Party A for the purpose of:

Section 5(a)(v), Not Applicable

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v), Not Applicable,

Section 5(a)(vi), Not Applicable

Section 5(a)(vii), Not Applicable

Section 5(b)(iv), Not Applicable

- (b) **“Specified Transaction”** will have the meaning specified in Section 14 of the Agreement.
- (c) The **“Breach of Agreement”** provision of Section 5(a)(ii) will apply to Party A and will not apply to Party B.
- (d) The **“Credit Support Default”** provisions of Section 5(a)(iii) will apply to Party A and will not apply to Party B.
- (e) The **“Misrepresentation”** provisions of Section 5(a)(iv) will apply to Party A and will not apply to Party B.
- (f) The **“Default under Specified Transaction”** provisions of Section 5(a)(v) will **[not]** apply to Party A and will not apply to Party B.
- (g) The **“Cross-Default”** provisions of Section 5(a)(vi) will not apply to Party A and will not apply to Party B.
- (h) The **“Credit Event Upon Merger”** provisions of Section 5(b)(iv) will not apply to Party A and will not apply to Party B.
- (i) The **“Automatic Early Termination”** provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (j) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
 - (i) Market Quotation will apply.
 - (ii) The Second Method will apply.
- (k) **Payments on Early Termination Due to Certain Events.** Notwithstanding Section 6, if Party A is (A) the Affected Party for an Additional Termination Event or a Tax Event Upon Merger, or (B) the Defaulting Party for an Event of Default, paragraphs (i) to (v) below apply:
 - (i) The definition of **“Market Quotation”** is deleted and replaced with the following:

“Market Quotation” means, for one or more Terminated Transactions, a Firm Offer which is:

 - (1) made by a Reference Market-maker that is an Eligible Replacement;
 - (2) for an amount that would be paid to Party B (expressed as a negative number) or by Party B (expressed as a positive number) in consideration of an agreement between Party B and the Reference Market-maker to enter into a Replacement Transaction; and
 - (3) made on the basis that Unpaid Amounts for the Terminated Transaction or group of Transactions are to be excluded but any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of any conditions precedent) after that Early Termination Date is to be included.
 - (ii) In determining whether or not a Firm Offer satisfies the condition in sub-paragraph (ii)(B) of the definition of “Replacement Transaction”, Party B will act in a commercially reasonable manner.
 - (iii) The definition of **“Settlement Amount”** is deleted and replaced with the following:

“Settlement Amount” means, for any Early Termination Date:

 - (a) if, on or prior to the Early Termination Date, a Market Quotation for a Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally

binding, the Termination Currency Equivalent of the amount (whether positive or negative) of the Market Quotation;

(b) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions has been accepted by Party B and is legally binding and one or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, the Termination Currency Equivalent of the amount (whether positive or negative) of the lowest of the Market Quotations (for the avoidance of doubt, (i) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number and (ii) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value); or

(c) if, on the Early Termination Date, no Market Quotation for the relevant Terminated Transaction or group of Terminated Transactions is accepted by Party B and is legally binding and no Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B's Loss (whether positive or negative and without reference to any Unpaid amounts) for the relevant Terminated Transaction or group of Terminated Transactions.

- (iv) At any time on or before the Early Termination Date at which two or more Market Quotations have been communicated to Party B and remain capable of becoming legally binding upon acceptance by Party B, Party B must accept the lowest of the Market Quotations. For this purpose, (A) a Market Quotation expressed as a negative number is lower than a Market Quotation expressed as a positive number, and (B) the lower of two Market Quotations expressed as negative numbers is the one with the largest absolute value.
- (v) If Party B requests Party A in writing to obtain Market Quotations, Party A will use reasonable efforts to do so before the Early Termination Date.
- (vi) For the purpose of determining Unpaid Amounts, any payment or delivery obligation which was (or would have been but for Section 2(a)(iii)) required to be performed pursuant to paragraph 2 of the Credit Support Annex shall be disregarded.

(l) **"Termination Currency"** shall mean Canadian dollars.

(m) **Bankruptcy**

- (i) Section 5(a)(vii)(2), (7) and (9) does not apply to Party B.
- (ii) Section 5(a)(vii)(3) does not apply to Party B for any assignment, arrangement or composition effected by or under the Indenture Documents.
- (iii) Section 5(a)(vii)(4) does not apply to Party B for a proceeding or petition instituted or presented by Party A or any of its Affiliates.
- (iv) Section 5(a)(vii)(6) does not apply to Party B for (i) an appointment that is made under the Indenture Documents, or (ii) an appointment to which Party B is not subject.
- (v) Section 5(a)(vii)(8) applies to Party B only if it applies to Section 5(a)(vii)(1), (3), (4), (5) and (6), as amended.

(n) **Tax Event and Tax Event Upon Merger**

Section 5(b)(ii) applies but the words “(x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y)” are hereby deleted.

Section 5(b)(iii) applies but Party A will not be entitled to designate an Early Termination Date by reason of a Tax Event Upon Merger if it is the Affected Party.

Section 6(b)(ii) applies but the words “or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party” are deleted.

(o) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event:

- (i) It shall be an Additional Termination Event and Party B shall be the sole Affected Party and all Transactions then outstanding shall be Affected Transactions if Party B fails to comply with the requirements of Part 5(o).
- (ii) It shall be an Additional Termination Event and Party A shall be the sole Affected Party and all Transactions then outstanding shall be the Affected Transactions if Party A fails to comply with the requirements of Part 5(h).
- (iii) It shall be an Additional Termination Event and Party B shall be the sole Affected Party upon an acceleration of the Series [■] Notes under Section [8.02] of the Trust Indenture.
- (iv) **[NTD: consider including a partial termination provision to facilitate right-sizing interest rate hedges following any unscheduled reductions of the underlying financed amounts]**

Part 2 **Tax Representations.** [NTD: subject to Tax review]

(a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party A and Party B will make the following representations.

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

- (i) Party A and Party B each make the following representation:

It is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*.

(c) **Other representations:** None made.

Part 3 **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
Each Party	Any document required or reasonably requested to allow the other party to make payments under the Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate.	Promptly upon reasonable demand by either party.

(b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Each Party	Evidence satisfactory in form and substance to the other party of (i) the authority of the signatory of the party to execute this Agreement [and Credit Support Annex] and any Confirmation and (ii) list of the names, true signatures of the signatory of this Agreement or any Confirmation.	Upon execution of this Agreement	Yes
Party A	A copy of unaudited financial statements for the most recently ended fiscal year.	As soon as reasonably practicable following a request by Party B to the extent not publically available online	No
Each Party	Legal opinion satisfactory to the other Party.	Upon execution of this Agreement	Yes
Party B	ISDA Cross-Border Swaps Representation Letter	If requested by Party A, upon execution and delivery of this Agreement.	No.
Party A and B	ISDA Canadian Representation Letter #1	Upon execution and delivery of this Agreement.	No.

Part 4 **Miscellaneous.**

- (a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A: [NTD: ■]

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
Electronic Messaging System Details: ■
(Only with respect to transactions through this Office)

For any notices with respect to Section 5 and 6 of this Agreement for Party A:

Address: ■
Attention: ■
Facsimile: ■ Telephone: ■
E-mail: ■

Address for notices or communications to Party B:

[ISSUER]
c/o Ontario Power Generation Inc.
100 University Avenue, 11th Floor
Toronto, Ontario, M5J 2Y1

Attn: [■]
Fax: [■]
Email: [■]

with copies to:

[ISSUER TRUSTEE], in its capacity as Issuer Trustee for [ISSUER]

Attn: [■]
Fax: [■]
Email: [■]

Notwithstanding Section 12(a) of this Agreement, service of legal process documents relating to this Agreement may not be delivered by facsimile or by electronic messaging system.

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement, neither party appoints a Process Agent.
- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A [is][is not] a Multibranch Party and may only enter into a Transaction through any of the following Offices:

Party B is not a Multibranch Party.

- (e) **Calculation Agent.** The Calculation Agent is Party A unless (i) otherwise specified in a Confirmation in relation to the relevant Transaction or (ii) a replacement Calculation Agent is designated by Party B as set

forth below. All calculations by the Calculation Agent shall be made in good faith and through the exercise of its commercially reasonable judgment. The calculations and determinations of the Calculation Agent shall (except in the case of manifest error) be final and binding upon all parties. Upon the failure of Party A to perform its obligations as Calculation Agent hereunder within five Local Business Days of Party A receiving from Party B notice of such failure, the sole remedy of Party B will be the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent. For so long as an Event of Default in respect of Party A is continuing, Party B will have the right, upon notice to the Calculation Agent, to designate a third party that is a Reference Market-maker as replacement Calculation Agent, without prejudice to any other remedy to which Party B is otherwise entitled under this Agreement. Upon Party A demonstrating its ability to resume performance of its obligations as Calculation Agent or such Event of Default no longer continuing, Party A may elect to resume its role as Calculation Agent.

- (f) **Credit Support Document.** Details of any Credit Support Document:

In relation to Party A: any Eligible Guarantee,

In relation to Party B: not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A, any Eligible Guarantor, and in relation to Party B; not applicable.
- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to choice of law doctrine).
- (i) **Jurisdiction.** Section 13(b)(i) is hereby deleted and replaced by the following Section 13(b)(i):
“(i) submits to the exclusive jurisdiction of the Province of Ontario.”
- (j) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply.
- (k) **“Affiliate”** will have the meaning specified in Section 14 of this Agreement.
- (l) **Characterization under Program Agreements.** The parties acknowledging and agree that:
 - (i) The Master Agreement and this Schedule constitute a “Derivative Agreement” as used and defined under the Indenture Documents and a “derivative agreement” as defined under the Act.
 - (ii) Party B is a “Derivative Counterparty” as used and defined under the Indenture Documents and a “derivative agreement” as defined under the Act.
 - (iii) Any payments required in connection with the Master Agreement and this Schedule will be “derivative payments” as defined under the Act.

Part 5 **Other Provisions.**

- (a) **Definitions.** Reference is hereby made to the 2006 ISDA Definitions (the “2006 Definitions”) as published by the International Swaps and Derivatives Association, Inc. (“ISDA”) or to any subsequent update being the then current version of the 2006 Definitions. Any terms used and not otherwise defined herein which are contained in the Definitions shall have the meaning set forth therein, and if not contained in the Definitions, will have the meanings specified in the Supplemental Indenture, either directly or by reference. If there is any inconsistency between this Agreement and the Definitions, this Agreement will govern. If there is inconsistency between a Confirmation and this Agreement or the Definitions, the Confirmation will govern.

For the purpose of this Agreement:

“Act” means the *Ontario Fair Hydro Plan Act, 2017* together with any Regulations in effect thereunder from time to time.

“DBRS” means DBRS Limited and its successors.

“Eligible Guarantee” means an unconditional and irrevocable guarantee by a guarantor that is a principal debtor rather than surety and is directly enforceable by Party B, where either (i) a law firm has given a legal opinion confirming that none of the guarantor’s payments to Party B under the guarantee will be subject to deduction or withholding for Tax, (ii) the guarantee provides that, if the guarantor’s payments to Party B are subject to deduction or withholding for Tax, the guarantor is required to pay the additional amount necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required, or (iii) if any payment under the guarantee is made net of deduction or withholding for Tax, Party A is required under Section 2(a)(i) to make an additional payment necessary so that the net amount received by Party B will equal the full amount Party B would have received had no deduction or withholding been required.

“Eligible Replacement” means an entity (i)(A) having the Ratings Event I Required Ratings, or (B) whose obligations owing to Party B under this Agreement (or its replacement, as applicable) are guaranteed under an Eligible Guarantee by a guarantor having the Ratings Event I Required Ratings, and (ii) reasonably acceptable to Party B.

“Firm Offer” means an offer which, when made, was capable of becoming legally binding upon acceptance.

“Indenture Documents” means the Supplemental Indenture together with the Trust Indenture.

“Local Business Day” means a day other than a Saturday, a Sunday or a day banking institutions or trust companies in Toronto, Ontario or Montreal, Quebec are authorized or obligated by law to close, and the definition of **“Local Business Day”** in Section 14 is deleted.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Relevant Entity” means Party A, a guarantor under an Eligible Guarantee or an Eligible Replacement, as applicable.

“Replacement Transaction” means, for any Terminated Transaction, a transaction that (i) has terms which would be effective to transfer to a transferee all of Party A’s rights and obligations under this Agreement, which terms are identical to the terms of this Agreement, other than party names, the effective date of the transfer, tax representations and any representations about the status of the substitute counterparty, notice information and account details, or (ii) (A) would preserve for Party B the economic equivalent of any payment or delivery under this Agreement for the Terminated Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date, and (B) has terms which are, in all material respects, no less beneficial for Party B than those of this Agreement, as determined by Party B.

“Supplemental Indenture” means the Supplemental Indenture dated as of [■], among Party B as issuer of Series [■] Notes, [INDENTURE TRUSTEE], as Indenture Trustee, and [List any other parties], which supplements the Trust Indenture.

“Trust Indenture” means the Trust Indenture dated as of [■], 2017, between Party B, as issuer, and [INDENTURE TRUSTEE], as Indenture Trustee.

- (b) **Equivalency Clause.** For purposes of disclosure pursuant to the Interest Act (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement, which is to be calculated on any basis other than a full calendar year, is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the number of days in the calendar year in which the period for which interest at such rate is payable ends and the denominator of which is the number of days comprising such other basis.
- (c) **English Language.** The parties hereto have requested that this Agreement and the Schedule be drafted in the English language and that all present and future Confirmations be drafted in the English language. Les parties aux présentes ont requis que cette convention et l’Annexe ainsi que toutes les présentes et futures confirmations soient rédigées en langue anglaise.

- (d) **Eligible Financial Contract.** Each Party, with respect to itself, hereby represents and warrants to the other Party, continuing throughout the term of this agreement, that it is its intention that this Contract and each Transaction hereunder shall constitute an “eligible financial contract” within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any other applicable Canadian insolvency legislation.
- (e) **Telephone Recording.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.
- (f) **No Reliance.** In connection with the negotiation of, the entering into, and the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction hereunder, each party acknowledges and agrees that: (i) each party is acting for its own account and is not acting as a fiduciary for, or a financial or investment advisor to the other party (or in any similar capacity); (ii) each party is not relying upon any communications (whether written or oral) from the other party as investment advice or as a recommendation to enter into this Agreement, any Credit Support Document to which it is a party and each Transaction hereunder (other than the representations expressly set forth in this Agreement), it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (iii) neither party has received from the other party any assurance or guarantee as to the expected results of any Transaction; and (iv) each party has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own independent investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party.
- (g) **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (h) **Credit Rating Downgrade of Party A**

(1) Ratings Event I:

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from DBRS is not at least, respectively “A” or R-1 (low) or better; or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody’s is not at least, respectively A2 or P-1 or better (such rating thresholds collectively designated as the “**Ratings Event I Required Rating**” and such failure the “**Ratings Event I Trigger**”, Party A shall at its own expense and not later than 30 Local Business Days following the occurrence of the Ratings Event I (so long as the Ratings Event I is continuing):

(X) transfer acceptable Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(1) of the ISDA Credit Support Annex; or

(Y) either obtain an Eligible Guarantee or transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Z) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency.

(2) Ratings Event II:

Party A agrees that if at any time (i) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case of a Relevant Entity from DBRS is not at least, respectively BBB or R-2 (middle) or better, or (ii) the long-term unsecured debt rating or the short-term unsecured debt rating, in each case, of a Relevant Entity from Moody's is not at least, respectively A3 or P-3 or better (such rating thresholds collectively designated as the "**Ratings Event II Required Rating**" and such failure the "**Ratings Event II Trigger**", Party A shall at its own expense following the occurrence of a Ratings Event II (so long as such Ratings Event II is continuing):

(X) transfer all of its interests and obligations in or under this Agreement, on substantially the same terms and in writing (i) to an Eligible Replacement, or (ii) to another party that otherwise satisfies the Rating Agency Condition in respect of the Related Rating Agency; provided that such transfer does not result in adverse tax consequences or increased costs for Party B and Party A shall continue to perform its obligations under this Agreement until the transfer of all of its interest and obligations in or under this Agreement is completed; or

(Y) take such other action as agreed to between Party A and Party B which satisfies the Rating Agency Condition in respect of the Related Rating Agency, or

(Z) provide Eligible Credit Support in accordance with Paragraph 11(b)(i)(C)(2) of the ISDA Credit Support Annex in an amount as required thereunder until (i) such time as the action set out in this subparagraph (2)(X) or (2)(Y) above has been taken, or (ii) the Relevant Entity meets the Ratings Event I Required Rating.

- (i) **Successors.** This Agreement and all obligations of the parties hereunder shall be binding upon than respective successors and assigns and shall, together with the rights and remedies, inure to their benefit.
- (j) **Scope of Agreement.** The parties acknowledge and agree that this Agreement will only apply to Transactions entered into in respect of the Series 2016-1 Notes.
- (k) **Counterparts.** This Schedule may be executed in one or more counterparts, either in original or facsimile or pdf form, each of which shall constitute one and the same document and form part of the Agreement. If an executed copy of this Schedule is transmitted by the parties through transmission by facsimile or e-mail in pdf format, this Schedule shall constitute the original document between the parties and the parties hereby adopt the signatures printed by the receiving facsimile machine or computer as the original signatures of the parties.
- (l) **Transfer.** Exception to the Transfer provisions of Section 7 is that consent to transfer shall not be unreasonably withheld as long as the transferee, designated by Party A, is an Eligible Replacement or otherwise satisfies the Rating Agency Condition in respect of the related Rating Agency. In addition, Party A agrees that it will use reasonable commercial efforts to novate each outstanding Transaction hereunder to an Eligible Replacement if it is requested to do so in connection with an assignment of its interests in the Series [■] Notes pursuant to the Indenture Documents.
- (m) **[Foreign Account Tax Compliance Act.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance

of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement.”] **[NTD: subject to Tax review]**

- (n) **Set-off.** Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement and each Confirmation will be made without set-off or counterclaims.
- (o) **Amendments.** Party B hereby agrees that it will not amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Related Program Agreements if any such amendment, supplementation, modification, restatement or replacement or waiver or consent is material, except with the prior written consent of Party A and satisfaction of the Rating Agency Condition in respect of each Related Rating Agency. Each Related Rating Agency shall be notified by or on behalf of Party B of any nonmaterial amendments, waivers and consents as soon as possible after such non-material amendments, waivers and consents become effective. Any such proposed change to a Related Program Agreement will be subject to Section [13.19] of the Trust Indenture.
- (p) **Limited Recourse:**
 - (i) Party A is a Specified Creditor (as defined in the Trust Indenture) and its entitlements under this Agreement are subject to the provisions applicable to Specified Creditors under the Trust Indenture. The right of Party A to payments under this Agreement, or the exercise of rights or remedies against Party B under this Agreement is subject to Sections [8.15] (*Limited Recourse*) and [17.01] (*No Petition*) of the Trust Indenture.
 - (ii) Part 5(p)(i) survives the termination of this Agreement.
- (q) **Non-Petition.** Party A hereby covenants and agrees that it will not at any time institute or encourage against Party B, or join or acquiesce in any institution against Party B of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency, winding-up or similar law for one year and a day after the latest maturing Note (as defined in the Indenture) in connection with any obligations relating to this Agreement or any of the other Related Program Agreements.
- (r) **Party B Pledge.** Notwithstanding Section 7, Party A acknowledges that Party B has or will pledge its rights under this Agreement to the Indenture Trustee for the benefit of the related Specified Creditors under the Indenture Documents and agrees to the pledge. The Indenture Trustee will not be deemed to be a party to this Agreement. However, the Indenture Trustee, acting on behalf of the related Specified Creditors, has the right to enforce this Agreement against Party A. Party A will be entitled to rely on any notice or communication from the Indenture Trustee to that effect.

Part 6. FX Transaction and Currency Option Transaction Provisions

(a) FX Definitions

- (i) **Incorporated Into Agreement.** The 1998 ISDA FX and Currency Option Transaction Definitions, as published by the International Swaps and Derivatives Association, Inc., (the “FX Definitions”) are incorporated by reference into this Agreement. Any terms used and not otherwise defined in this Agreement that are contained in the FX Definitions shall have the respective meanings specified therein (without regard to any amendments thereto after the date of this Agreement).
- (ii) **Inconsistency.** In the event of any inconsistency between the FX Definitions and any other provisions or definitions that are incorporated by reference into this Agreement, the FX Definitions shall prevail with respect to an FX Transaction or a Currency Option Transaction. In the event of any inconsistency between the FX Definitions and the provisions otherwise

contained in this Agreement, those provisions otherwise contained in this Agreement shall prevail.

- (b) **Confirmations.** Any FX Transaction or Currency Option Transaction into which the parties may before the date of this Agreement have entered, or may in the future enter, where the relevant Confirmation on its face does not expressly exclude the application of this Agreement, shall (to the extent not otherwise provided for in this Agreement) be subject to, governed by and construed in accordance with this Agreement (in substitution for any existing terms, if any, whether express or implied). Each such FX Transaction and Currency Option Transaction shall be a Transaction, and the documents and other confirming evidence (including electronic messages on an electronic messaging service) exchanged between the parties confirming such FX Transaction or Currency Option Transaction shall each be a Confirmation (even where not so specified therein), for the purposes of this Agreement.
- (c) **Payment Instructions.** All payments to be made in respect of FX Transactions and Currency Option Transactions shall be made in accordance with standing payment instructions provided by the parties (or as otherwise specified in a Confirmation). Any such instructions from a party must be received no later than one Business Day prior to the Value Date or Premium Payment Date (as the case may be) for such Transaction and otherwise be in conformity with standard inter-dealer market practice regarding foreign currency delivery.
- (d) **FX Transaction Novation Netting.**
 - (i) Automatic Novation Netting. In addition to the settlement netting provisions of Section 2(c) of this Agreement, unless otherwise agreed, if the parties enter into an FX Transaction that is governed by this Agreement through a pair of Novation Netting Offices giving rise to an obligation of a party under this Agreement to pay an amount of currency (a “Currency Obligation”) on the same date and in the same currency as a then existing Currency Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such FX Transaction, each such Currency Obligation shall automatically and without further action be cancelled and simultaneously replaced by a new Currency Obligation for such date determined as follows: the amount of such currency that would otherwise have been payable by each party on such date shall be aggregated and the party with the larger aggregate amount shall have a new Currency Obligation to pay to the other party the amount of such currency by which its aggregate amount exceeds the other party’s aggregate amount, provided that if the aggregate amounts are equal, no new Currency Obligation shall arise. This paragraph (d) shall not affect any other Currency Obligation of a party to pay any different currency on the same date. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such novation, or (ii) may fail to make changes in any of its books as a result of any such novation.
 - (ii) “Novation Netting Office” means, as to either party, the office or offices specified in Part 4, Section A in the Schedule and any other office specified from time to time by one party and agreed to in writing by the other party.
- (e) **Currency Option Transaction Discharge and Termination**
 - (i) Automatic Discharge and Termination of Offsetting Options. Unless otherwise agreed, any Call Option or any Put Option written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option or a Put Option, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of

the last Premium payable in respect of such Currency Option Transactions; provided that such termination and discharge may only occur in respect of Currency Option Transactions:

- (1) each being with respect to the same Put Currency and the same Call Currency;
- (2) each having the same Expiration Date and Expiration Time;
- (3) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
- (4) each having the same Strike Price;
- (5) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e. where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction which is partially discharged and terminated shall continue to be a Currency Option Transaction for all purposes of this Agreement. This provision shall apply notwithstanding that either party (i) may fail to send out a Confirmation in respect of any such discharge and termination, or (ii) may fail to make changes in any of its books as a result of any such discharge and termination.

(ii) ***Additional Definitions***

- (1) “Call Option” means a Currency Option Transaction entitling, but not obligating, the Buyer to purchase from the Seller at the Strike Price a specified quantity of the Call Currency.
- (2) “Put Option” means a Currency Option Transaction entitling, but not obligating, the Buyer to sell to the Seller at the Strike Price a specified quantity of the Put Currency.

- signature page follows -

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

[HEDGE PROVIDER]

[ISSUER]

(Party B)

(Party A)

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature Page – ISDA Schedule]

From: [John Kim](#)
To: [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Lisa Stein](#); [Anna Strathy](#); [Gavin He](#)
Subject: FW: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:28:24 PM

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [mailto:Victor.Buza@ieso.ca]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Sarah Neville](#); [Sarah Harris](#); [William Tan](#); [Anna Strathy](#)
Cc: [Lisa Stein](#); [Gavin He](#)
Subject: FW: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:07:02 PM

Fyi.

From: John Kim
Sent: Tuesday, October 24, 2017 5:06 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi Victor,

With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.

Let's aim to get the letter agreement done well before the end of this week.

Thanks,

John

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Anna Strathy](#)
To: [Ronald Kwan](#); [Ken Kandeepan](#)
Subject: FW: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:40:26 AM

I just clarified with Gadi – he’s hoping for a response to the question below before 1pm today when he’ll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister’s exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO’s accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister’s exemption from the OFA’s public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister’s directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister’s exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Anna Strathy](#)
To: [John Kim](#)
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14
Date: Tuesday, June 20, 2017 3:30:20 PM
Attachments: [Item 8\(iii\) BLACKLINED Treasury Policy June 14 2017.pdf](#)
[Item 8\(iv\) BLACKLINED Schedule A - IESO Treasury Policy.pdf](#)
[IESO Finance Policy Update June 2017 Reg 280-14.pdf](#)

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.
Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1
Web: www.ieso.ca[\[ieso.ca\]](#) | Twitter: [IESO Tweets](#)[\[twitter.com\]](#) | LinkedIn: [IESO](#)[\[linkedin.com\]](#)
Conservation: www.saveONenergy.ca[\[saveonenergy.ca\]](#) | Twitter: [saveONenergyOnt](#)[\[twitter.com\]](#) |
LinkedIn: [saveONenergy](#)[\[linkedin.com\]](#)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures (“Treasury Policy”)			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	Treasury 01
Subject.:	IESO TREASURY POLICY	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	<u>June 14, 2017</u> ~~n/a~~

1. DEFINITIONS

CFO: means the IESO’s Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

- a) To adopt a policy for the sound and efficient management of the IESO’s borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- b) To make investments when the investments are advisable for the sound and efficient management of the IESO’s financial affairs;
- c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans¹.

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 ~~Director~~**Manager**, Treasury and Pension Operations (or equivalent) is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

¹ Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

- a) All new borrowing facilities must be approved by the IESO Board of Directors.
- b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.
- c) All borrowing facilities must be denominated in Canadian dollars.
- d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).
- e) The IESO may only borrow from the following list of lenders:
 - i. Government of Canada, Canadian provincial governments or any of their agencies; and
 - ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;
- f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.
- g) Borrowing facilities shall only be utilized for the following purposes:
 - i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
 - ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
 - iii. To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
 - iii,iv. To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
 - iv,v. To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

vi. As directed by the Minister of Energy;

6.2 Permitted Investments and Forward Foreign Exchange Contracts:

- a) See **Schedule “A”: Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
- b) Investments or counterparties not listed in **Schedule “A”** are prohibited.
- c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

Permitted Categories of Investment Products or Hedging Financial Instrument	Allowable Counterparties or Issuers	Minimum S&P's Rating or equivalent⁽¹⁾	Maximum Face Amounts per counterparty or issuer	Max Term Limit
1. Deposits held in bank accounts 2. Term Deposits 3. Bankers' Acceptances 4. Bearer Deposit Notes 5. Certificates of Deposit 6. Guaranteed Investment Certificates	Canadian Schedule I Banks	Short term: "A-1+"	~~\$420~~ 500 million per counterparty;	65 days
7. Treasury Bills 8. Bonds 9. Debentures 10. Promissory Notes	Government of Canada Or Canadian Provincial Government, Or Government Agency (fully guaranteed by the Government of Canada or Provincial government)	TBills and Promissory Notes: "A-1+" Bonds and Debentures: "AA-"	Government of Canada and Province of Ontario: unlimited Other: \$500million	365 days
11. US\$: Spot Market Purchases	Canadian Schedule I Banks	Short term: "A-1+"	The total estimated US\$ expenditures within the next 100 days. Maximum of US\$5million	100 days
12. US \$: Forward Foreign Exchange Contracts	Canadian Schedule I Banks	Up to 1 year: "A-1+" Long term: "AA-"	The total estimated US\$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US\$ currency held by the IESO. Maximum of US\$25million	25 months ⁽²⁾

¹ All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).

² US\$ spot, and US\$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

June 15, 2017



Independent Electricity System Operator

1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474
www.ieso.ca

The Honorable Charles Sousa
Minister of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON
M7A 1Y7

Dear Minister:

**Re: Independent Electricity System Operator ("IESO")
IESO Treasury Policy (version June 14, 2017)**

Ontario Regulation 280/14 (the "Regulation"), as amended, prescribes requirements for the IESO regarding its treasury activities. The Regulation requires the IESO to adopt a statement setting out the IESO's investment, borrowing, and financial management policies and procedures (known herein as the "IESO Treasury Policy").

The IESO's Board of Directors approved the attached revised (*black-lined to highlight the changes made*) IESO Treasury Policy on June 14, 2017.

As required by the Regulation, the IESO submits the attached revised IESO Treasury Policy for your review and requests your approval of the same.

Please contact me (905.403.6944), Kimberly Marshall, IESO Chief Financial Officer (416.969.6232), or John Rattray, IESO General Counsel (416.506.2856) for any questions you or your staff may have regarding this request.

Sincerely,

Anthony Martinello
Director, Treasury and Pension Operations

Attachment: IESO Treasury Policy (version June 14, 2017)

cc: Scott Thompson, Deputy Minister, Ministry of Finance
Gadi Mayman, Chief Executive Officer, Ontario Financing Authority

From: [John Kim](#)
To: [Lisa Stein](#); [Sarah Harris](#); [William Tan](#); [Sarah Neville](#)
Cc: [Anna Strathy](#)
Subject: FW: IESO credit facility
Date: Friday, October 06, 2017 10:16:24 AM
Attachments: [Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean.docx](#)

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [mailto:Tom.McKinlay@ontario.ca]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim

Sent: Thursday, September 21, 2017 11:42 AM

To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>

Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

I am writing in relation to the Independent Electricity System Operator's (IESO) request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*.

Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement. The OFA, IESO and the Ministry of Energy ("~~ENERGYMOE~~") acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for the IESO [Energy to confirm] and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment to the IESO in the future.

Commented [ESP1]: Defer to Corporate?

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement"), on an unsecured basis, the OFA requires the Ministry of Energy ("~~ENERGYMOE~~") and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing \$975 million credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and ~~ENERGYMOE~~ agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a "Loan Agreement"; together, the "Loan Agreements"):
 - o Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and ~~ENERGYMOE~~ agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the "intercept provision").
 - o Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.
 - o Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with ~~ENERGYMOE~~ and seek

| ENERGYMOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- | o Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, ENERGYMOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by ENERGYMOE. Upon request, ENERGYMOE will provide similar information to the Minister of Finance.
- | o ENERGYMOE acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment to the IESO, ENERGYMOE will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance's direction.

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

From: [John Kim](#)
To: [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Cc: [Sarah Harris](#); [Sarah Neville](#); [Lisa Stein](#)
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 11:49:14 AM

Fyi.

From: John Kim
Sent: Tuesday, September 26, 2017 11:48 AM
To: 'Anthony Martinello' <Anthony.Martinello@ieso.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Anthony,

We had a quick internal discussion and we are not quite there on the need to share this with OPG and their lawyers. If you feel strongly about it then I will take it back to get that direction but would it be possible to manage any concerns via proposed edits to the draft letter agreement?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
[www.ieso.ca\[ieso.ca\]\[na01.safelinks.protection.outlook.com\]](http://www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com])

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Anna Strathy](#)
To: [Gadi Mayman](#)
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 11:18:04 AM

Hi Gadi,

This is what I was chatting with Sarah about. IESO wants to share the draft letter agreement (re: intercept) with OPG and OPG's lawyers. I think the concern from IESO is whether the intercept could appear to OPG (or its lawyers) to provide the government priority over payments. There is some concern that OPG's lawyers will not be familiar with the intercept concept (and its requirement under OFA's lending policy) and we may be in for further delays.

I spoke with John and Sarah and it may be worthwhile to have a conversation with OPG once the draft letter is shared to help to provide some context and highlight the administrative nature of this requirement. I understand from Sarah's email below that the loan has been confidential up until now, but OFA can waive confidentiality and allow disclosure to OPG, so the sequencing would need to be worked out (i.e., confirm release of the letter, then discuss with OPG), but would you be willing to call John Lee (or someone else at OPG) to explain the intercept and this letter agreement? Alternatively, we could have John or Ron call over to their equivalent.

Anna

From: John Kim
Sent: Tuesday, September 26, 2017 10:44 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
[www.ieso.ca\[ieso.ca\]\[na01.safelinks.protection.outlook.com\]](http://www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com])

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Sarah Neville](#); [Lisa Stein](#); [Sarah Harris](#)
Cc: [Anna Strathy](#)
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 10:04:57 AM

Hi Sarah, Lisa and Sarah,

I have no issues.....would you have any concern with the IESO sharing with OPG.

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
[www.ieso.ca\[ieso.ca\]\[na01.safelinks.protection.outlook.com\]](http://www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com])

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Sarah Neville](#)
To: [Lisa Stein](#)
Cc: [John Kim](#); [Sarah Harris](#); [Anna Strathy](#)
Subject: FW: IESO credit facility
Date: Tuesday, September 26, 2017 10:04:46 AM

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[[ieso.ca](http://www.ieso.ca)][na01.safelinks.protection.outlook.com]

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Lisa Stein](#); [Sarah Neville](#); [William Tan](#); [Sarah Neville](#)
Cc: [Anna Strathy](#)
Subject: FW: IESO credit facility
Date: Friday, October 20, 2017 8:07:53 AM
Attachments: [Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean.docx](#)

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

“DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.”

Thanks,

John

From: John Kim
Sent: Friday, October 06, 2017 10:16 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 27, 2017 11:50 AM

To: McKinlay, Tom (MAG)

Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim

Sent: Monday, September 25, 2017 2:03 PM

To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim

Sent: Thursday, September 21, 2017 11:42 AM

To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>

Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

I am writing in relation to the Independent Electricity System Operator's (IESO) request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*.

Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement. The OFA, IESO and the Ministry of Energy ("~~ENERGYMOE~~") acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for the IESO [Energy to confirm] and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment to the IESO in the future.

Commented [ESP1]: Defer to Corporate?

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement"), on an unsecured basis, the OFA requires the Ministry of Energy ("~~ENERGYMOE~~") and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing \$975 million credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and ~~ENERGYMOE~~ agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a "Loan Agreement"; together, the "Loan Agreements"):
 - o Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and ~~ENERGYMOE~~ agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the "intercept provision").
 - o Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.
 - o Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with ~~ENERGYMOE~~ and seek

| ENERGYMOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- | o Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, ENERGYMOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by ENERGYMOE. Upon request, ENERGYMOE will provide similar information to the Minister of Finance.
- | o ENERGYMOE acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment to the IESO, ENERGYMOE will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance's direction.

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

From: [Gadi Mayman](#)
To: [Anna Strathy](#)
Subject: FW: OEFC-IESO Credit Facilities and Amendment
Date: Wednesday, November 29, 2017 10:14:04 AM
Attachments: [IESO-OEFC Note_v8.docx](#)
[ATT00001.htm](#)

I'm fine with this, has it gone through OFA Legal?

From: Ronald Kwan
Sent: Wednesday, November 29, 2017 8:16 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Subject: OEFC-IESO Credit Facilities and Amendment

Hi Gadi, Mike,

Staff updated the BN on the IESO request to amend the OEFC credit facilities for permitted liens.

Staff heard from the IESO yesterday that without the terms of the OEFC facilities being amended this week, it would need to ask for an interim waiver from the OEFC to avoid being in default. If feasible, it may make sense to simply go ahead with amending the facilities for permitted liens instead.

Ron

OEFC -- IESO CREDIT FACILITY AGREEMENT & THE PERMITTED LIENS

The Independent Electricity System Operator (“IESO”) has requested that OEFC amend the existing credit facility agreements between OEFC and IESO (for \$160M and \$120M) to address the additional obligations IESO is taking on under Ontario’s Fair Hydro Plan. IESO has indicated that OEFC credit facilities will not be used for Ontario Fair Hydro Plan (FHP) purposes.

- o On November 28, 2017, IESO staff wrote to staff that without the terms of the OEFC facilities being amended, it would need to ask for an interim waiver from the OEFC to avoid being in default.

CONTEXT

- Under the FHP, the IESO and Ontario Power Generation (OPG) are interacting to refinance a portion of the Global Adjustment over a longer period of time.
- IESO and OPG are in a discussion to grant a security/priority interest on IESO’s assets to OPG Trust for the period of the first 4 years of the GA deferral.
- The IESO sought and received its Board’s approval on Nov 22, 2017 to enter into a security agreement with OPG Trust. The security agreement is currently in draft form. Without amending the existing OEFC \$160M and \$120M credit facility agreements (the “OEFC Agreements”), IESO could potentially be considered to be in default of the terms of the various agreements. IESO staff wrote:

“...it likely is best to add to the definition of “Permitted Liens” in the two OEFC facilities to address a) IESO granting security to the OPG Trust during the first 4 years of fair hydro program and b) the possibility that the Clean Energy Adjustment funds collected by IESO might be considered to be subject to a lien. The IESO does not want to be inadvertently in default.”

- The IESO provided a draft Security Agreement, dated November 7th, 2017, between them and the OPG Trust to OFA. According to the draft Security Agreement, in the unlikely event that the IESO runs into financial difficulty, the IESO would give OPG Trust a priority in the IESO’s assets, including all accounts of the IESO and all cash and proceeds from LDCs, that would put OPG Trust ahead of unsecured creditors, including the OFA and the OEFC.
 - o The security agreement is not limited to the Clean Energy Adjustment funds collected by the IESO only.
- In order to address this issue, the IESO has requested to amend the definition of the “permitted liens” in both existing OEFC Agreements to include any liens related to the FHP. Specifically, adding a clause in the existing OEFC Agreements that any lien related to OFHP will not be viewed as negative pledge by OEFC, so those liens can be used to secure the performance of IESO’s obligations to OPG under the FHP. This would allow IESO to grant security to the OPG Trust during the first 4 years of implementing the GA deferral and also avoid breaching the terms of the existing agreements with OEFC.
- To support IESO’s role in the implementation and participation under the Ontario Fair Hydro Plan Act, 2017 (“OFHP Act”), in July 2017 the IESO had requested that the OFA make similar changes to the credit facility agreements with OFA in October.
 - o On November 6, 2017, the OFA amended the \$475M facility to amend the definition of “permitted liens” and also included same for the new \$2B credit facility agreement between OFA and the IESO , as requested by the IESO.

CONSIDERATIONS

- With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against the IESO's assets, the OEFC could find itself unable to collect payments due from the IESO. The likelihood of this scenario could be assessed as low.
 - The extent of this risk is subject to uncertainty at this time, given that the regulations that govern the payments related to the Fair Allocation Amount in each period, and how that relates to the obligations to the Financing Entity, are still under development.
- IESO is an agency of the government consolidated line-by-line in the Province's accounts.
- The OFA agreed to IESO's requested changes to the OFA credit facilities.
- OFA'S Capital Markets Operations staff have commented that the legislation governing OEFC, the *Electricity Act, 1998*, may provide differing context from the OFA's objects and mandate under the *Capital Investment Plan Act, 1993* and any changes to the OEFC agreements should take this into account.
- According to the Minister's Directives associated with the OEFC Agreements, the loan and the credit facilities are "subject to such other terms as OEFC deems appropriate." Therefore, an amendment for permitted liens can be done under the existing directives, and new or revised directives from the Minister of Finance are not deemed necessary. This would be consistent with the approach when the pre-existing OFA-IESO credit facility agreement was amended for permitted liens on November 6, 2017.

RECOMMENDATIONS

- In order to support IESO's request in relation to its obligation with respect to FHP, OFA staff are of the view that the existing OEFC Agreements can be amended to include liens related to FHP under the definition of the "permitted liens".

BACKGROUND

- In order to support IESO's role with the implementation of the OFHP Act, OFA staff made similar changes to the definition of 'permitted liens' in existing OFA-IESO credit facility agreements on November 6, 2017.
- Currently, under the existing credit facility agreements between OEFC and the IESO, the definition of "permitted liens" does not include any lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.

Electricity Finance Branch, Corporate and Electricity Finance Division
Capital Markets Operations, Capital Markets Division
Ontario Financing Authority
November 28, 2017

From: [Lisa Stein](#)
To: [Sarah Neville](#); [Anna Strathy](#)
Subject: FW: Signatures for FHP and Amending Agreement No. 10
Date: Monday, November 06, 2017 4:07:46 PM
Attachments: [FHP Credit Agreement OFA IESO - Nov 6, 2017 - OFA Signed.pdf](#)
[OFA IESO Amending Agreement No. to Jan 1, 2005 Credit Facility Nov 6, 2017 - OFA signed.pdf](#)

FYI.

From: William Tan
Sent: Monday, November 06, 2017 4:07 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Signatures for FHP and Amending Agreement No. 10

Hello Victor,

Please find the attached signed FHP Credit Facility Agreement and Amending Agreement #10 to the Jan. 1, 2005 Credit Agreement. Original signature pages will reach you tomorrow or the day after.

Thanks,

Will

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Monday, November 06, 2017 3:25 PM
To: William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Subject: RE: Signatures for FHP and Amending Agreement No. 10
Importance: High

Will,

Please find attached the following documents signed by IESO:

1. Amending Agreement #10 to the Jan. 1, 2005 Credit Agreement;
2. Certified IESO Board Resolution and Incumbency Certificate;
3. Scan of the \$2 Billion Grid Note.
4. Intercept Letter Agreement.

I will send the new Revolving Credit Facility Agreement in relation to FHP under a separate email immediately following.

We have already overnighted the original grid note for \$2 billion and an original Intercept Letter signed by all parties. Per your request, we will send original agreement signature pages for both agreements as well – can we send those tomorrow or do you need the overnighted too?

Let us know. We look forward to receiving your confirmation of closing.

Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: William Tan [<mailto:William.Tan@ofina.on.ca>]
Sent: November 06, 2017 3:09 PM
To: Victor Buza
Cc: Lisa Stein; Sarah Harris; Anthony Martinello
Subject: RE: Signatures for FHP and Amending Agreement No. 10

Hello Victor,

I clarified internally and we would want an original signature page for the FHP Agreement and Amending Agreement No. 10.

Thanks,

Will

From: William Tan
Sent: Monday, November 06, 2017 2:25 PM
To: 'Victor Buza' <Victor.Buza@ieso.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Subject: RE: Signatures for FHP and Amending Agreement No. 10

Hi Victor,

My apologies. Please scan the separated \$2B and \$475 MM Grid promissory notes. Forward the \$2B promissory note but hold on to the \$475MM Grid Promissory Note until November 21.

- Resolution of the Board of Directors
- Incumbency Certificate
- Intercept Letter

- \$2 B Grid Promissory Note
- \$475 MM Grid Promissory Note

Yes, please forward the documents to myself.

William Tan
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3

Thanks,

Will

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Monday, November 06, 2017 2:12 PM
To: William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Subject: RE: Signatures for FHP and Amending Agreement No. 10

I will scan and send all documents you listed in their entirety, not just signature pages. Can you confirm, are you saying you want a scan of the \$475MM grid note?

Just so I get it right, should I courier the hardcopies of the Intercept Letter and Note to your attention and address, Will? Call me if it's quicker.

Victor
416-969-6079

From: William Tan [<mailto:William.Tan@ofina.on.ca>]
Sent: November 06, 2017 1:57 PM
To: Victor Buza; Anthony Martinello
Cc: Lisa Stein; Sarah Harris
Subject: FW: Signatures for FHP and Amending Agreement No. 10

Hi Victor,

Thank you for the update. When you send the soft copy signatures, would it be possible to include the signatures within the agreements?

You were probably going to include the following signed soft copies anyway but out of caution I have listed them below:

- Resolution of the Board of Directors
- Incumbency Certificate
- Intercept Letter
- \$2 B Grid Note
- \$475 MM Grid Note

Hardcopy of the Intercept Letter and \$2B Grid Note – overnight delivery is fine.

Per s. 16 AA #10 - Anthony and I discussed on Friday that \$475MM Grid note would be signed today but held by IESO until November 21. After the borrowing notice and election notices are actioned, OFA will produce the grid notes to evidence payment and advancements. IESO will then send the new \$475MM prom note to OFA. Once received OFA will send the \$975MM cancelled prom note to IESO.

Thanks,

Will

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Monday, November 06, 2017 10:48 AM
To: William Tan <William.Tan@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: RE: Signatures for FHP and Amending Agreement No. 10

Hi Will – I have a signing meeting scheduled with our signatory at 2:30pm this afternoon – so I will send you counterpart signatures and a scanned version of the Intercept Letter by 3:00pm or possibly earlier.

Hardcopy of Intercept Letter to follow as you prefer – overnight or pickup? We also need to make arrangements re delivery of the \$2Bn Grid Note.

Per s.16 of AA#10, the other Note for \$475MM is to be delivered following the Effective Time in exchange for the return by OFA of the Nov 30 2016 Note for \$975MM.

Victor

From: William Tan [<mailto:William.Tan@ofina.on.ca>]
Sent: November 06, 2017 10:33 AM
To: Anthony Martinello
Cc: Lisa Stein; Victor Buza; Sarah Harris
Subject: Signatures for FHP and Amending Agreement No. 10

Good morning Anthony,

Just checking-in on approximately when we can expect the documents to be executed so I may

prepare my signatory.

Thanks,

Will Tan | *Documentation & Analysis Specialist*
Capital Markets Division | Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario M5G 1Z3, CANADA
Tel. (416) 325-8090 | Fax: (416) 860-8346
william.tan@ofina.on.ca

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and may contain information that is privileged and confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message including any attachments, without reading it or making a copy. Thank you

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: November 6, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the 6 day of November 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital existing under Part II of the *Electricity Act, 1998* (the “**IESO**”) (as Borrower)

AND

ONTARIO FINANCING AUTHORITY, a Crown agency established under the *Capital Investment Plan Act, 1993* (the “**OFA**” and together with the IESO, the “**Parties**”) (as Lender)

RECITALS:

WHEREAS the IESO has requested a revolving credit facility for up to a maximum principal amount of \$2 billion from the OFA for the purpose of supporting the IESO’s role in the implementation and administration of the *Ontario Fair Hydro Plan Act, 2017*.

THEREFORE in consideration of the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the meanings assigned to them below:

“**Advances**” means advances made by the OFA to the IESO under Article 3 and “**Advance**” means any one of such advances, and in the case of an election by the IESO under Section 3.3, includes a “**Continued Advance**”, as defined in Section 3.3(1), as applicable.

"Advances Outstanding" means, at any time, an amount equal to the aggregate principal amount of all Advances outstanding at such time.

"Agreement", "herein", "hereby", "hereor", "hereunder" and similar expressions mean and refer to this agreement and all schedules hereto and all instruments in amendment or confirmation of this agreement and such schedules and not to any particular article or section; and the expression "Article" or "Section" followed by a number means the specified Article or Section of this Agreement.

"Borrowing Notice" has the meaning specified in Section 3.2(1).

"Business Day" means any day that is not a day on which banks are generally authorized or required by law or executive order to be closed in the City of Toronto.

"Clean Energy Adjustment" has the same meaning as that term is defined in the OFHP.

"Commitment" means, at any time, an amount equal to \$2 billion.

"Consolidated Assets" means, at any time, the book value of the assets of the IESO and the Subsidiaries, determined as of such time on a consolidated basis in accordance with GAAP.

"Continued Advance" has the meaning specified in Section 3.3(1).

"Credit Facility" means the revolving credit facility to be made available to the IESO by the OFA under this Agreement for the purposes specified in Section 2.2.

"Current Repayment Date" has the meaning specified in Section 3.3(2).

"Default" means any event which, after the giving of notice, or passage of time, or both, would be an Event of Default.

"Dollars" or "\$" means lawful currency of Canada.

"Election Notice" has the meaning specified in Section 3.3(2).

"Event of Default" has the meaning specified in Section 5.1.

"First Advance" has the meaning specified in Section 3.2(3).

"GAAP" means accounting policies and standards as established by the Chartered Professional Accountants of Canada, at the relevant time and applied on a consistent basis.

"Grid Note" has the meaning specified in Section 3.2(2).

"Indebtedness" means (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent:

- (a) every obligation of such Person for borrowed money;
- (b) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar instruments;
- (d) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or expenses accrued in the ordinary course of business which are not overdue or which are being contested in good faith);
- (e) every capital lease obligation of such Person;
- (f) the Swap Termination Value of each Swap Contract of such Person; and
- (g) every obligation of the type referred to in paragraphs (a) through (f) of another Person and all dividends of another Person the payment of which, in each case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise.

"Lien" means any assignment, hypothec, mortgage, lien, pledge, security interest, encumbrance, title retention agreement or other agreement or arrangement to secure the performance of any obligation (including the payment of Indebtedness).

"Material Subsidiary" means, at any time, a Subsidiary which has consolidated assets with a book value of more than \$25 million determined in accordance with GAAP.

"New Repayment Date" has the meaning specified in Section 3.3(2).

"OFHP" means the *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Schedule 1, including any regulations made thereunder, and all as amended from time to time.

"Permitted Liens" means:

- (a) Liens for taxes and assessments not at the time overdue or any Liens securing workmen's compensation assessments, unemployment insurance or other social security obligations not at the time overdue;
- (b) any Liens or rights of distress reserved in or exercisable under any lease for rent and for compliance with the terms of such lease;
- (c) any obligations or duties, affecting the property of the IESO to any municipality or governmental, statutory or public authority, with respect to any franchise, grant, license

or permit and any defects in title to structures or other facilities arising solely from the fact that such structures or facilities are constructed or installed on lands held by the IESO or such Material Subsidiary under government permits, leases or other grants, which obligations, duties and defects in the aggregate do not materially impair the use of such property, structures or facilities for the purpose for which they are held by the IESO or such Material Subsidiary;

- (d) any deposits or Liens in connection with building contracts, bids or tenders, expropriation proceedings, surety or appeal bonds, costs of litigation when required by law, and public and statutory obligations, Liens or claims incidental to current construction, builders', mechanics', labourers', materialmen's, warehousemen's, carriers' and other similar Liens;
- (e) the right reserved to or vested in any municipality or governmental or other public authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit, that affects any lands, to terminate any such lease, license, franchise, grant or permit or to require annual or their periodic payments as a condition to the continuance thereof;
- (f) any undetermined or inchoate Liens and charges incidental to the current operations of the IESO or a Material Subsidiary that have not at the time been filed against the IESO or such Material Subsidiary; provided, however, that if any such Lien or charge shall have been filed, the IESO or such Material Subsidiary shall be prosecuting an appeal or proceedings for review with respect to which it shall have secured a stay in the enforcement of any such Lien or charge;
- (g) any Lien the validity of which is being contested at the time by the IESO or a Material Subsidiary in good faith and the enforcement of which has been stayed;
- (h) any easements, rights-of-way and servitudes that in the opinion of the IESO will not in the aggregate materially and adversely impair the use or value of the land for the purpose for which it is held or occupied by the IESO or a Material Subsidiary;
- (i) any Liens and privileges arising out of judgments or awards with respect to which the IESO or a Material Subsidiary shall be prosecuting an appeal or proceedings for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review;
- (j) any other Liens of a nature similar to the foregoing which do not in the opinion of the IESO, acting reasonably, materially impair the use of the property subject thereto or the operation of the business of the IESO or any Material Subsidiary or the value of such property for the purpose of any such business; and
- (k) any Lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other

lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.

"Person" means any individual, corporation, partnership joint venture, association, trust or unincorporated organization or any government or agency or political subdivision thereof.

"Purchase Money Mortgage" means any Lien on property, granted in connection with financing, assumed or given back in payment of, or created or arising by operation of law to secure, the whole or part of the purchase price of such property, or granted in connection with financing the cost in whole or in part of construction or installation of or improvements to any property, provided that such Lien is incurred or assumed at the time or within 12 months after the purchase of such property or the completion of such construction, installation or improvements, as the case may be, and includes any extension, renewal or replacement thereof on the same property if the principal amount of the Indebtedness secured thereby at the time of such extension, renewal or replacement is not increased and if such Lien is not extended to any other property.

"Repayment Date" means, in respect of the repayment of Advances, the repayment date contained in the most recent Borrowing Notice or Election Notice.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon, means the date specified in or on the agreement or instrument evidencing such Indebtedness as the fixed date on which any principal amount of such Indebtedness or such installment of interest is due and payable.

"Subsidiary" means:

- (a) a corporation more than 50% of the voting power or the outstanding Voting Shares of which is owned, directly or indirectly, by the IESO or by one or more other Subsidiaries or by the IESO and one or more other Subsidiaries; or
- (b) any Person (other than a corporation) in which the IESO, or one or more other Subsidiaries, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"Swap Contract" means any agreement whether or not in writing, relating to any transaction or derivative transaction including a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, commodity future, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction currency swap, cross-currency rate swap, swaption, currency option or other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

“Swap Termination Value” means, in respect of any one or more Swap Contracts entered into by a Person, after taking into account the effect of any legally enforceable netting agreement relating to such Swap contracts:

- (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) for such Person have been determined in accordance therewith, such termination value(s); and
- (b) for any date prior to the date referred to in paragraph (a), the net amount determined pursuant to the terms of such Swap Contracts that would be payable by such Person if such Swap Contracts were terminated as of such date.

“Voting Shares” of any Person means securities of such Person which ordinarily carry a right to vote for the election of directors (or Persons performing similar functions) of such Person.

Section 1.2 Effect of Headings.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and shall not affect the construction or interpretation hereof.

Section 1.3 Singular, Plural, Gender, Certain Phrases, etc.

Where the context permits and unless such interpretation would be inappropriate, words importing the singular only shall include the plural and vice versa and words importing gender may include any gender. In this Agreement, (a) the words "including" and "includes" mean "including (or includes) without limitation", and (b) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

Section 1.4 Accounting.

Except as otherwise specifically provided herein, all accounting terms shall be applied and construed in accordance with GAAP.

Section 1.5 Non-Business Days.

Whenever any payment to be made hereunder shall be due, any period of time would end, any calculation is to be made or any other action is to be taken on or as of, a day other than a Business Day, such payment shall be made, such period of time shall end, such calculation shall be made and such other actions shall be taken, as the case may be, unless otherwise specifically provided for herein, on or as of the next succeeding Business Day.

ARTICLE 2 REVOLVING CREDIT FACILITY

Section 2.1 Availability.

The OFA agrees, on the terms and conditions of this Agreement, to make Advances to the IESO. The OFA shall make each Advance in Dollars.

Section 2.2 Use of Proceeds.

The IESO shall use the proceeds of Advances for the purposes for which it is authorized to borrow funds pursuant to Regulation 280/14 made under the *Electricity Act, 1998*, as such regulation may be amended or replaced from time to time, subject to the condition that proceeds of Advances may be used only for IESO's financing needs and requirements of any kind arising in connection with the IESO's role with respect to and obligations under the OFHP.

Section 2.3 Credit Facility Limit.

The Advances Outstanding shall not at any time exceed the Commitment. The Credit Facility shall revolve and no payment under the Credit Facility shall reduce the Commitment.

Section 2.4 Mandatory Repayment.

Subject to Sections 2.5 and 5.2, the IESO shall repay each Advance together with the interest accrued thereon on the applicable Repayment Date, and, in any event, shall repay all Advances Outstanding, together with all accrued interest and all other amounts owing hereunder on September 30, 2022.

Section 2.5 Prepayments.

The IESO is not entitled to prepay any part of the Advances Outstanding or the interest accrued thereon without the prior written consent of the OFA.

Section 2.6 Payments under this Agreement.

- (1) The OFA shall make Advances to the IESO under this Agreement to or to the order of the IESO by wire transfer of immediately available funds in accordance with wire transfer instructions given by the IESO to the OFA from time to time, or in such other manner as the IESO may specify to the OFA from time to time.
- (2) The IESO shall make any payment required hereunder to be made by it to the OFA, to or to the order of the OFA, by wire transfer of immediately available funds in accordance with wire transfer instruction given by the OFA to the IESO from time to time, or in such other manner as the OFA may specify to the IESO from time to time. The IESO shall make each such payment in Canadian Dollars.

Section 2.7 Computations of Interest.

- (1) All computations of interest shall be made by the OFA taking into account the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable on the basis of a year of 365 days or 366 days, as the case may be.
- (2) For the purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest which is equivalent to a rate of interest payable under this Agreement for any period of less than a year may be determined by multiplying the rate of interest for such period by a fraction, the numerator of which is the actual number of days in a year commencing on and including the first day in such period and ending on but excluding the corresponding day in the next calendar year and the denominator of which is the actual number of days in such period.

Section 2.8 Limit on Rate of Interest.

- (1) Notwithstanding any provision contained in this Agreement, the IESO shall not be obliged to make any payments of interest or other amounts payable to the OFA hereunder in excess of the amount or rate which would be prohibited by applicable law or would result in the receipt by the OFA of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)).
- (2) In the event that any such payments are limited or prohibited as provided in Section 2.8(1), the OFA shall have no further obligation to make any Advances available hereunder and the Advances Outstanding, together with all accrued interest and all other amounts owing hereunder, shall become immediately due and payable.

Section 2.9 Application of Payments.

All payments made by the IESO under this Agreement shall be applied firstly to the payment of interest payable to the OFA on late payments of principal or interest hereunder, secondly, to the payment of accrued and unpaid interest payable to the OFA hereunder and thirdly, to the payment of the outstanding principal amount of any Advances payable to the OFA.

ARTICLE 3 ADVANCES

Section 3.1 Advances.

The OFA agrees, on the terms and conditions of this Agreement, to make Advances to the IESO under the Credit Facility from time to time on any Business Day prior to September 23, 2022.

Section 3.2 Procedure for Advances.

- (1) Subject to Section 3.3(5), each Advance shall be made subject to two Business Days' prior notice given not later than 10:00 a.m. (Toronto time) by the IESO to the OFA. Each notice of an Advance (a "**Borrowing Notice**") shall be substantially in the form of Schedule 1, other than a Borrowing Notice that is included in an Election Notice as permitted by Section 3.3(3). Each Borrowing Notice shall be irrevocable and binding on the IESO and shall specify (a) the requested date of the Advance; (b) the principal amount of the Advance, and (c) the Repayment Date of the Advance which shall not be earlier than 5 days and not later than 95 days after the date of the requested Advance. Each Borrowing Notice shall also certify the use of proceeds of the Advance which shall in any case be in accordance with Section 2.2. The OFA will make the principal amount of each Advance available to the IESO in accordance with Article 2.
- (2) On or before the date of the first Advance hereunder, the IESO shall execute and deliver to the OFA a grid promissory note in respect of Advances substantially in the form of Schedule 3 (the "**Grid Note**"). The IESO authorizes the OFA to record on the Grid Note (a) the date and amount of each Advance or Continued Advance; (b) the applicable rate of interest for each Advance or Continued Advance; (c) the Repayment Date of each Advance or Continued Advance; (d) the date and amount of each payment of interest and each payment of principal or portion thereof in respect of each Advance or Continued Advance; and (e) Advances Outstanding. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such Advances and repayments; provided that the failure of the OFA to record any amount, rate or date shall not affect the obligation of the IESO to pay the Advances Outstanding and all interest accrued thereon and any other amounts due under this Agreement.
- (3) Respecting the first Advance to be made under this Agreement (the "**First Advance**"), a specified portion thereof (the "**Repayment Amount**") shall be used to repay a portion of the IESO's outstanding indebtedness to the OFA under the credit agreement between the Parties dated January 1, 2005, as amended (the "**Existing Credit Facility**"). The amount of the Repayment Amount shall be detailed in the Borrowing Notice issued in respect of the First Advance. Concurrently with the First Advance, OFA shall provide to IESO an updated grid in respect of the grid note issued under the Existing Credit Facility evidencing the repayment of the Repayment Amount thereunder.

Section 3.3 Elections Regarding Advances.

- (1) The IESO may elect to continue all or a portion of the principal amount of any Advance and any amount of interest on such Advance (together, the "**Continued Advance**") for a further period of at least 5 days and up to a maximum of 95 days beginning on the then current Repayment Date in accordance with Section 3.3(2).
- (2) Each notice to continue an Advance for a further period (an "**Election Notice**") shall be provided by the IESO to the OFA at least two Business Days prior to the Repayment Date of the Advance (the "**Current Repayment Date**"), and in each case, not later than

10:00 a.m. (Toronto time). Each such Election Notice shall be given substantially in the form of Schedule 2 and shall be irrevocable and binding upon the IESO and shall specify: (a) the Current Repayment Date; (b) the new aggregate total amount of the proposed Continued Advance; (c) the amount of interest or principal, if any, to be paid or re-paid by the IESO with respect to such Advance on the Current Repayment Date; and (d) the new Repayment Date of the proposed Continued Advance, which shall be no earlier than 5 days and not later than 95 days after the current Repayment Date (the “**New Repayment Date**”). If the IESO fails to deliver an Election Notice to the OFA for any Advance as provided herein, such Advance shall be repayable on the applicable Repayment Date.

- (3) An Election Notice with respect to a proposed Continued Advance may include a Borrowing Notice for a further Advance proposed to be made on the Current Repayment Date. The Repayment Date of such further Advance shall be the New Repayment Date of the Continued Advance that is specified in the Election Notice. Such Borrowing Notice shall be given substantially in the form of Schedule 2.
- (4) The calculation of interest on a Continued Advance shall be determined in the same manner as an Advance under Section 3.4 and shall be recorded on the Grid Note in accordance with Section 3.2(2).
- (5) Any portion of an Advance not continued for a further period in accordance with Section 3.3(2) shall be repayable on the applicable Repayment Date.
- (6) The Credit Facility shall at all times rank *pari passu* with all other unsubordinated and unsecured Indebtedness of the IESO, subject to the existence of any Liens that secure Indebtedness, as permitted by subsections 4.6 (a) through (e) hereof.
- (7) All amounts owing in respect of the Advances shall be paid without exercising any right of set off or counterclaim by the IESO.

Section 3.4 Interest on Advances.

- (1) The IESO shall pay interest on the unpaid principal amount of each Advance in accordance with this Section 3.4 from and including the date of such Advance until the principal amount of such Advance is repaid in full.
- (2) Interest shall accrue on the principal amount of each Advance from and including the date of the Advance to but excluding the Repayment Date of such Advance, at an annual rate equal to the Province of Ontario’s cost of funds for borrowings with a similar term as determined by the OFA plus 0.25 percent per annum, before as well as after the date such principal amount or interest thereon becomes due hereunder and both before and after Default and shall be payable on the Repayment Date for such Advance. Any amount of interest arising hereunder which is not paid when due shall bear interest at the same rate compounded monthly at which it accrued from the due date for payment until the date of actual payment. The amount of interest payable on an Advance will be calculated by the

OFA by dividing the interest rate applicable to the Advance by 365 or 366, as the case may be, and multiplying the result by the principal amount of the Advance and further multiplying the result by the number of days in the period from the date of the Advance to the Repayment Date of the Advance.

- (3) If the IESO elects to continue an Advance in accordance with Section 3.3(2), the OFA shall determine the interest rate applicable after the original Repayment Date of the Advance and endorse the said rate on the grid forming part of the Grid Note in respect of Advances held by it.

Section 3.5 Conditions Precedent

The obligation of the OFA to make the Advances to the IESO pursuant to Section 2.1 is subject to the following conditions being satisfied to the OFA's satisfaction at the time of making each Advance:

- (a) that the representations and warranties of the IESO contained in this Agreement are true and correct as at the date of making the Advance;
- (b) that no Event of Default has occurred and is continuing;
- (c) that there shall, in the reasonable opinion of the OFA, have been no material adverse change in the financial condition of the IESO or a Material Subsidiary; and
- (d) that the OFA has received such other documentation which it has reasonably requested to ensure that the IESO is in compliance with the terms and conditions of this Agreement, including certified true copies of any necessary resolutions, a written legal opinion from counsel to the IESO confirming that the borrowing is within the legal powers of the IESO and that the Agreement is a direct, unsecured obligation of the IESO enforceable against the IESO in form satisfactory to the OFA.

ARTICLE 4 COVENANTS OF THE IESO

Section 4.1 Repayment of Advances.

The IESO will duly and punctually pay all amounts owing under this Agreement in accordance with the terms and subject to the conditions of this Agreement.

Section 4.2 IESO will Maintain its Corporate Existence.

The IESO will at all times maintain its corporate existence.

Section 4.3 Maintenance of Properties.

The IESO will cause all property owned by the IESO or any Material Subsidiary to be maintained and kept in good condition, repair and working order, all as in the judgment of the IESO or any Material Subsidiary may be necessary for the proper operation of such property, except as and to the extent that the IESO or any Material Subsidiary may be prevented from doing so by fire, strikes, lockouts, walkouts, labour unrest, acts of God, inability to obtain labour or materials, enemy action, governmental restrictions, civil commotion, or unavoidable casualty or similar causes; provided, however, that nothing in this Section 4.3 shall prevent the IESO or any Material Subsidiary from discontinuing the maintenance of any such property or decommissioning any such property if such discontinuance or decommissioning is, in the judgment of the IESO or any such Material Subsidiary, desirable in the conduct of its business or the business of any such Material Subsidiary, or has been directly or indirectly requested or required by the Province of Ontario.

Section 4.4 Insurance.

The IESO will cause all property owned by the IESO or any Material Subsidiary which is of a character usually insured by companies operating similar businesses to be insured and kept insured with reputable insurers (which may include associations or other organizations for mutual or reciprocal insurance) against loss or damage by fire or other hazards or risks of the mature and to the extent that such property is usually insured by companies operating similar businesses.

Section 4.5 Conduct of Business.

The IESO will, and will cause the Subsidiaries to, carry on and conduct their respective businesses in accordance with good business practice.

Section 4.6 Negative Pledge.

The IESO will not, and will not permit any Material Subsidiary to, create, incur or assume any Lien, charging the interest of the IESO or any Material Subsidiary in any property, to secure any obligations (including any Indebtedness) unless, at or prior to the time such Lien is created, incurred or assumed, all amounts owing under this Agreement are secured equally and rateably with any and all such obligations secured or to be secured by such Lien, for so long as such obligations shall be secured, provided, however, that the foregoing covenant shall not prevent, restrict or apply to any of the following:

- (a) the creation, incurrence or assumption of any Purchase Money Mortgage;
- (b) the grant of any Lien in the normal course of business to any banks or financial institutions for present or future Indebtedness of the IESO or any Material Subsidiary to such banks or financial institutions payable on demand or having an original term to maturity less than 18 months;

- (c) Permitted Liens;
- (d) any extension, renewal or replacement of any of the Liens referred to in Sections 4.6(a), (b) or (c), provided that the principal amount secured by any such Lien outstanding immediately before such extension, renewal or replacement or refunding is not thereby increased; and
- (e) any Lien charging the interest of the IESO or any Material Subsidiary in any property to secure any Indebtedness, other than any Lien referred to in Sections 4.6(a), (b) or (c), provided that, at the time such Lien is created, incurred or assumed, the principal amount of such Indebtedness, together with the aggregate principal amount of all other Indebtedness secured by Liens permitted pursuant to this Section 4.6(e) which is outstanding at such time does not exceed 10% of Consolidated Assets at such time.

Section 4.7 Payment of OFA Expenses

In addition to any liability of the IESO to the OFA under any other provision of this Agreement, the IESO will, on demand, reimburse and indemnify OFA for all reasonable costs, charges and expenses, including reasonable fees and disbursements of its agents and counsel, incurred by OFA in connection with the Agreement (including those services incurred in the preservation of rights under or enforcement of this Agreement at any time during the continuance of a Default or Event of Default and for any reasonable loss or expense incurred by OFA as a result of any failure by the IESO to fulfill any of its obligations under this Agreement). All such costs, charges and expenses shall bear interest at the Province of Ontario's cost of funds plus 0.25 percent per annum (as determined by the OFA) calculated and payable monthly not in advance from in each case from the date on which the OFA incurs the cost, charge or expense until the date on which the IESO reimbursement the OFA therefor. The OFA agrees, acting reasonably, to invoice the IESO for any such costs, charges and expense as they are incurred, together with interest at the aforesaid rate (with interest on overdue interest).

Section 4.8 Reporting.

The IESO will promptly provide to the OFA any reports or supporting documents that the OFA may request from time to time.

Section 4.9 Late Repayment of Advance.

In the event that the IESO fails to repay the principal amount of any Advance and all interest accrued thereon when due, the IESO shall pay interest on the unpaid amount of such Advance at the same rate compounded monthly at which it accrued from the due date for payment until the date of actual payment.

ARTICLE 5
EVENTS OF DEFAULT AND REMEDIES

Section 5.1 Event of Default.

Wherever used in this Agreement, the term "Event of Default" means any of the following:

- (a) the IESO's failure to pay any interest upon any Advance when it becomes due and payable, if such failure continues for a period of 3 Business Days;
- (b) failure to pay the principal amount of any Advance on the applicable Repayment Date or the Advances Outstanding, all interest accrued thereon and all other amounts owing under this Agreement on September 30, 2022;
- (c) failure on the part of the IESO to observe or perform its obligations set forth in Section 4.1;
- (d) failure on the part of the IESO to observe or perform any of the other covenants or agreements on its part contained in this Agreement for a period of 20 days after the date on which written notice of such failure shall have been given to the IESO by the OFA;
- (e) any representation or warranty made by the IESO in this Agreement or in any certificate or other document at any time delivered hereunder to the OFA was incorrect or misleading in any material respect;
- (f) one or more breaches by the IESO of its covenants under one or more evidences of Indebtedness or instruments governing or securing the same with a principal amount then outstanding, individually or in the aggregate, of at least \$5 million, which breaches:
 - (i) constitute a failure to pay such Indebtedness when due and payable at its final Stated Maturity, continue after any applicable grace period and have not been cured or waived or ceased to exist, or
 - (ii) have resulted in such Indebtedness becoming or being declared due and payable prior to its final Stated Maturity (and which acceleration or declaration has not been waived or rescinded);
- (g) the IESO or any Material Subsidiary:
 - (i) becomes unable to meet its obligations as they generally become due or has ceased paying its current obligations in the ordinary course of business as they generally become due;
 - (ii) admits in writing its inability to pay its debts generally or makes a general assignment for the benefit its creditors or files a proposal or other scheme

of arrangement involving the rescheduling or composition of its Indebtedness;

- (iii) institutes or has instituted against it any proceeding seeking:
 - (A) to adjudicate it as bankrupt or insolvent,
 - (B) liquidation, winding-up or reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors including any plan of compromise or arrangement or other corporate proceeding involving or affecting its creditors, or
 - (C) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its assets,

and in the case of any such proceeding instituted against it (but not instituted by it), either the proceeding remains undismissed or unstayed for a period of 30 days, or any remedy sought in any such proceeding (including the entry of order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties and assets) occurs; or

- (iv) takes any corporate action to authorize any of the actions in Sections 5.1 (g)(i) to (iii); or

- (h) if there shall be rendered against the IESO or any Material Subsidiary a final judgment or judgments for the payment of money in an aggregate amount in excess of \$5 million by a court or courts of competent jurisdiction, and the IESO or any Material Subsidiary shall have failed to satisfy such judgments or to appeal therefrom (or from the order, decree or process pursuant to which such judgments were granted, passed, entered or affirmed) and to obtain a stay of execution thereof within the period prescribed by law for appeals, and to have such judgments discharged within 30 days after the expiration of such period or the period of any such stay, whichever shall later expire.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default occurs and is continuing, then and in every such case the OFA may at its option, in addition to any other remedy available to the OFA at law, by written notice to the IESO, take any or all of the following actions:

- (a) suspend the right of the IESO to request any further Advance until the Event of Default has been cured to the OFA's satisfaction or, if the Event of Default is not

cured within three (3) Business Days after the date on which written notice of such Event of Default shall have been given to the IESO by the OFA, declare all amounts owing hereunder including all interest accrued to be due and payable immediately, by a notice in writing to the IESO, and upon any such declaration all such amounts shall become immediately due and payable.

- (b) invoke the Intercept pursuant to section 5.7 of this Agreement to require payment of any amount due and payable under this Agreement.

Section 5.3 Suits for Enforcement by the OFA.

If an Event of Default occurs and is continuing, the OFA may proceed to protect and enforce the rights vested in it by this Agreement either by suit in equity or by action at law or by proceedings in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right vested in the OFA by this Agreement or by law.

Section 5.4 OFA May File Proof of Claim.

If proceedings for the receivership, insolvency, liquidation, bankruptcy, winding-up, reorganization, arrangement or composition of the IESO under any applicable law are pending, or if a receiver, trustee, custodian or other similar official shall have been appointed for the property of the IESO, or if any other judicial proceedings relative to the IESO, its creditors or its property are pending, the OFA shall be entitled and empowered, by intention in such proceeding or otherwise:

- (a) to file and prove a claim for all amounts owing under this Agreement and to file such other papers or documents as may be necessary or advisable in order to have the claims of the OFA (including any claim for fees and disbursements of the OFA, its agents and counsel) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claim.

Section 5.5 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the OFA is intended to be exclusive of any other such right or remedy, and every such right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.6 Delay or Omission not Waiver.

No delay or omission of the OFA to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right or remedy given by this Article 5 or by law to OFA may be exercised from time to time, and as often as may be deemed expedient, by the OFA.

Section 5.7 Intercept

- (a) The IESO hereby acknowledges that, in accordance with the terms of the letter agreement of even date herewith entered between the Ministry of Energy, the IESO and the OFA made pursuant to Section 23 of the *Capital Investment Plan Act, 1993* (the “**Intercept Letter**”), the Minister of Finance is entitled to deduct only from those monies appropriated by the Legislature for payment through the Ministry of Energy to the IESO (“**Appropriated Funds**”), amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this Agreement. On the occurrence of an Event of Default relating to a failure by IESO to pay when due any amounts owing hereunder, subject to the OFA’s compliance with any relevant provisions hereof and as set out in the Intercept Letter, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO has failed to pay to the OFA in accordance with the provisions of this Agreement and to pay such amounts directly to the OFA (“**Intercept**”).
- (b) If, after following the process specified in the Intercept Letter (including, without limitation, allowing for a reasonable cure period on the terms specified therein), the OFA determines that it is necessary to request the Minister of Finance to exercise the Intercept, the OFA will give written notice to the Minister of Finance, with a copy to the Ministry of Energy, detailing the IESO’s failure to pay when due any amounts owing hereunder and requesting the deduction from the Appropriated Funds of amounts equal to the amounts that the IESO has failed to pay to the OFA under this Agreement.
- (c) The IESO agrees that any notice from the OFA to the Minister of Finance in relation to this section 5.7 (Intercept) may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance and, upon receipt of such notice, an amount equal to the amount that the IESO has failed to pay when due to the OFA on account of indebtedness under this Agreement shall be deducted from the Appropriated Funds and paid to the OFA.
- (d) For further certainty, the OFA acknowledges and agrees that the Intercept as provided for herein and in the Intercept Letter shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than the Ministry of Energy or through Ontario Climate Change Solutions Deployment Corporation.
- (e) The parties agree that, with respect to the exercise of the Intercept generally, the terms of this section 5.7 shall be applied consistently with the terms set out in the Intercept Letter which shall apply in full. Notwithstanding the foregoing, in the event of a conflict or

inconsistency between the terms and conditions of the Intercept Letter and the terms and conditions contained in this Agreement, the terms and conditions contained in this Agreement shall prevail.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF IESO

Section 6.1 Representations and Warranties of IESO

The IESO represents and warrants to the OFA that:

- (a) the borrowing of money (including principal and accrued interest) by the IESO and the execution, delivery and performance of this Agreement are within the powers and capacities of the IESO and have been duly authorized by all necessary legal action and proper proceedings;
- (b) the execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the compliance with the terms and conditions of this Agreement will not conflict with or result in a breach of any of the terms or provisions of the constituting documents or by-laws of the IESO, laws of Ontario, including laws of Canada applicable therein, applicable to the IESO or any contractual or other obligation binding on the IESO;
- (c) this Agreement will, when executed and delivered, constitute the legal, valid and binding obligation of the IESO enforceable against it in accordance with its terms; and
- (d) the monies advanced under this Agreement shall be used only by the IESO for the purposes set out in Section 2.2.

Section 6.2 Continuation of Representation and Warranties

The representations and warranties set out in Section 6.1 herein shall survive the execution and delivery of this Agreement, the making of each Advance by the OFA, notwithstanding any investigations or examinations which may be made by counsel for the OFA.

ARTICLE 7 GENERAL

Section 7.1 Notices.

Any notice, direction or other communication to be given under this Agreement shall be in writing and given by personally delivering it or sending it by telecopy or other means of electronic communication addressed:

If to the IESO, to it at:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1

Attention: Chief Financial Officer
Telephone: (416)969-6232
Facsimile: (905)403-6913

If to the OFA, to it at:

Ontario Financing Authority 1 Dundas Street West
Suite 1400 Toronto, Ontario M7A 1Y7

Attention: Executive Director & Chief Investment Officer – Capital Markets Division
Telephone: (416)325-8930
Facsimile: (416)860-8346

provided that any Borrowing Notice or Election Notice shall be addressed as indicated on Schedule 1 or Schedule 2 respectively.

Any communication hereunder shall be deemed to have been validly and effectively given if (a) personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time), otherwise on the next Business Day, (b) transmitted by facsimile or other means of electronic communication, on the Business Day following the date of transmission provided that, on the date of transmission, the addressee of such communication was notified by telephone of such transmission. Any party may from time to time change its address for communications hereunder by notice give in accordance with this Section 7.1 and until changed by like notice, such changed address shall be such party's address for purposes of this Section 7.1.

Section 7.2 Successors and Assigns.

This Agreement shall be binding on and enure to the benefit of the OFA and the IESO and their respective successors and permitted assigns, except that the IESO shall not, without the

prior written consent of the OFA assign, pledge or hypothecate any rights or obligations with respect to this Agreement.

Section 7.3 Amendments.

This Agreement may only be amended or otherwise modified by written agreement executed by each of the Parties.

Section 7.4 Waiver.

- (1) No waiver of any provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) of this Agreement nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (2) No failure on the part of a party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right and any single or partial exercise of such right shall not preclude another or further exercise of such right or the exercise of any other right.

Section 7.5 Further Assurances.

Each of the IESO and the OFA shall, from time to time, do all such acts and things and execute and deliver all such instruments as may be reasonably required to give effect to, and carry out the terms of, this Agreement

Section 7.6 Severability.

In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions in this Agreement shall not in any way be affected or impaired thereby.

Section 7.7 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

Section 7.8 Entire Agreement.

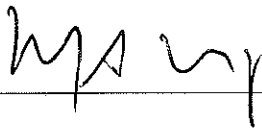
This Agreement, including the schedules hereto and any other agreements expressly referred to herein, constitutes the whole agreement between the Parties with respect to the matters dealt with in it, and it supersedes any prior agreement, undertakings, discussions and the like respecting the matters dealt with in this Agreement and entered into by the Parties before the date the OFA signs this Agreement.

Section 7.9 Counterparts.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ONTARIO FINANCING AUTHORITY

Per: _____

Name: Michael D. Manning
Title: Executive Director & Chief
Investment Officer,
Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM
OPERATOR

Per: _____

Name: Kimberly Marshall
Title: Vice President, Corporate Services;
Chief Financial Officer; Treasurer

I have authority to bind the corporation.

SCHEDULE 1

FORM OF BORROWING NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the Revolving Credit Facility Agreement between the IESO and the OFA dated October (·), 2017 (as amended, supplemented or restated from time to time, the "Agreement", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.2 of the Agreement that the IESO requests an Advance under the Agreement, and, in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"), as required by Section 3.2(1) of the Agreement:

- (a) The date of the Proposed Advance, being a Business Day is _____;
- (b) The principal amount of the Proposed Advance is \$ _____;
- (c) The Repayment Date of the Proposed Advance is _____. [Not earlier than 5 days and not later than 95 days after the date of the Proposed Advance.]

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

The representations and warranties of the IESO contained in the Agreement are true and correct as at the date hereof.

No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

The IESO has complied or is complying with all terms, covenants and conditions contained in the Agreement.

Any and all funds received under the Agreement will be expended or held solely for the purpose for which they are authorized to be used under the Agreement; no part of the funds to be received pursuant to this Notice shall be used for any other purpose.

Yours truly,

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

Per: _____

Name:

Authorized Signatory

SCHEDULE 2

FORM OF ELECTION NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

I. ELECTION NOTICE

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the Revolving Credit Facility Agreement between the IESO and the OFA dated October (·), 2017 (as amended, supplemented or restated from time to time, the "Agreement", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.3 of the Agreement that the IESO elects to continue for an additional term all or a portion of an Advance or a Continued Advance, as the case may be, and in connection with such election sets forth below the information relating to such election as required by Section 3.3(2) of the Agreement:

- (a) The date of the proposed election, being a Business Day (being the Current Repayment Date) is _____.
- (b) The aggregate amount of the proposed Continued Advance is \$_____, which is comprised of:
 - i. principal amount (or portion thereof) of Advance which is to be continued \$_____; and
 - ii. accrued interest on Advance which will not be paid on or before the Current Repayment Date \$_____;
- (c) The IESO will pay on the Current Repayment Date the following amount with respect to the Advance (if any): \$_____.
- (d) The New Repayment Date, being a Business Day, applicable to such proposed Continued Advance is _____. [Insert date not earlier than 5 days and not later than 95 days after the current Repayment Date for the Advance.]

Such election shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

II. BORROWING NOTICE [to be included if applicable]

The IESO gives you notice pursuant to Section 3.3(3) of the Agreement that the IESO requests a further Advance under the Agreement on the Current Repayment Date, with a Repayment Date of the New Repayment Date as specified above, and in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"):

Amount of the Proposed Advance: \$ _____

The total aggregate amount of the proposed Continued Advance and Proposed Advance pursuant to this Notice is: \$ _____

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice, if any, will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

The representations and warranties of the IESO contained in the Agreement are true and correct as at the date hereof.

No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

The IESO has complied or is complying with all terms, covenants and conditions contained in the Agreement.

Any and all funds received under the Agreement are being used solely as authorized under the Agreement and are not being used for any other purpose.

Yours truly,

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:

Authorized Signatory

SCHEDULE 3 – FORM OF GRID NOTE

INDEPENDENT ELECTRICITY SYSTEM OPERATOR GRID NOTE

Principal Amount: Up to \$2,000,000,000

Date:

FOR VALUE RECEIVED, INDEPENDENT ELECTRICITY SYSTEM OPERATOR (the "IESO"), incorporated under the laws of the Province of Ontario and having its principal office and place of business at Toronto, Ontario, **PROMISES TO PAY** to or to the order of **ONTARIO FINANCING AUTHORITY ("OFA")** at its offices at Toronto, Ontario or at such other place as the OFA may designate, the principal amount of each and all Advances made by the OFA to the IESO, all as recorded by the OFA on the grid attached to and forming part of this Grid Note, in lawful money of Canada, with interest on each Advance at the rate, calculated in the manner and payable at the times specified in the Revolving Credit Facility Agreement (as defined below).

OFA shall and is unconditionally and absolutely authorized and directed by the IESO to record on the Grid Note (i) the date and amount of each Advance, including any Advance all or a portion of which is continued by election under Section 3.3; (ii) the applicable rate of interest for each Advance; (iii) the repayment date of each Advance; (iv) the date and amount of each payment of interest and each payment of principal in respect of each Advance; and (v) the outstanding principal amount of the Grid Note. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such advances and repayments; provided that the failure of the OFA to record the same shall not affect the obligations of the Borrower to pay such amounts to the OFA.

The outstanding principal amount of each Advance under this Grid Note together with all interest accrued thereon shall become due and payable as specified in the Revolving Credit Facility Agreement dated [INSERT DATE] as amended, supplemented or restated from time to time, between the Borrower and the OFA (the "Agreement"). All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Agreement.

This Grid Note is issued pursuant to, and is subject to and payable in accordance with the provisions of, the Agreement.

This Grid Note is not transferable or negotiable without the prior written consent of the IESO.

The IESO waives presentment for payment and notice of non-payment.

This Grid Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the IESO has executed this Grid Note.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:
Authorized Signatory

Revolving Credit Facility Grid Note

Ontario Financing Authority
Line of Credit Grid Note

Entity : Independent Electricity System Operator
Loan Limit:

Project:
Schedule of loan transactions to:
Loan Advanced to:

New Loan and/or Rollover					Actual Repayment				
New Loan or Rollover Date	Principal Advanced or Rollover Amount	Interest Rate	Repayment Date	Total No. Of Days	Interest Amount	Actual Repayment	Principal	Interest	Actual Repayment Date
									Actual No. Of Days

AMENDING AGREEMENT NO. 10

This Amending Agreement No. 10 (this "**Amending Agreement**") is made as of the 21st day of November, 2017 (the "**Effective Date**")

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital existing under Part II of the *Electricity Act, 1998* ("**IESO**")

-and-

ONTARIO FINANCING AUTHORITY, a Crown agency established under the *Capital Investment Plan Act, 1993* ("**OFA**")

(together, the "**Parties**")

WHEREAS the Ontario Power Authority ("**OPA**") and the OFA entered into a credit agreement dated January 1, 2005 (the "**Original Agreement**");

AND WHEREAS effective January 1, 2015, the OPA and the then existing Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* with the name "Independent Electricity System Operator" ("**IESO**"), and the obligations of the OPA became obligations of the IESO;

AND WHEREAS pursuant to the amending agreements dated February 14, 2005, October 11, 2005 (titled, "Amending Agreement No. 3"), September 27, 2006 (titled, "Amending Agreement No. 4"), July 13, 2007 (titled, "Amending Agreement No. 5"), November 9, 2010 (titled, "Amending Agreement No. 6"), December 20, 2013 (titled, "Amending Agreement No. 7"), December 19, 2014 (titled, "Amending Agreement No. 8") and November 30, 2016 (titled, "Amending Agreement No. 9"), the OPA or IESO (as applicable) and the OFA amended the Original Agreement (as so amended, the "**Credit Agreement**", the terms defined therein being used herein as therein defined);

AND WHEREAS the Parties have now agreed to: (i) at the request of the IESO, decrease the total principal amount available under the Credit Agreement from \$975,000,000 to a total principal amount of up to \$475,000,000; (ii) amend the use of proceeds under the Credit Agreement; (iii) amend the Form of Election Notice and related provisions under the Credit Agreement; and (iv) make other amendments required as a consequence of the implementation of the OFHP (as defined below);

AND WHEREAS pursuant to Section 7.3 of the Credit Agreement, the Credit Agreement may only be amended or otherwise modified by written agreement executed by the Parties.

THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, and subject to the terms and conditions hereafter set out, the Parties agree that, as of the Effective Time (as defined below):

1. The definition of “Advances” in Section 1.1 of the Credit Agreement is deleted and replaced by the following:

“**Advances**” means advances made by the OFA to the IESO under Article 3 and “**Advance**” means any one of such advances, and in the case of an election by the IESO under Section 3.3, includes a “Continued Advance”, as defined in Section 3.3(1), as applicable.”

2. The definition of “**Commitment**” in Section 1.1 of the Credit Agreement is amended by deleting “\$975,000,000” and substituting “\$475,000,000” therefor.
3. The definition of “**Permitted Liens**” is amended by deleting the word “and” at the end of subsection (i); replacing the “.” at the end of subsection (j) and replacing it with “; and” ; and adding the following subsection (k):

“(k) any Lien arising from the IESO’s role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.”

4. The following definitions are added to Section 1.1 of the Credit Agreement:

“**Clean Energy Adjustment**” has the same meaning as that term is defined in the OFHP.

“**Continued Advance**” has the meaning specified in Section 3.3(1).

“**Current Repayment Date**” has the meaning specified in Section 3.3(2).

“**New Repayment Date**” has the meaning specified in Section 3.3(2).

“**OFHP**” means the *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Schedule 1, including any regulations made thereunder, and all as amended from time to time.

5. Section 2.3 “Use of Proceeds” of the Credit Agreement is deleted in its entirety (with the exception of the title of the section, which exception also applies regarding the amendments made under sections 6, 7 and 8 hereof) and replaced by the following:

“The IESO shall use the proceeds of Advances for the purposes for which it is authorized to borrow funds pursuant to Regulation 280/14 made under the *Electricity Act, 1998*, as such regulation may be amended or replaced from time to time, provided that Advances may be used only for liquidity purposes.”

6. Section 3.2 “Procedures for Advances” of the Credit Agreement is deleted in its entirety and replaced by the following:

- “(1) Subject to Section 3.3(5), each Advance shall be made subject to two Business Days’ prior notice given not later than 10:00 a.m. (Toronto time) by the IESO to the OFA. Each notice of an Advance (a “**Borrowing Notice**”) shall be substantially in the form of Schedule 1, other than a Borrowing Notice that is included in an Election Notice as permitted by Section 3.3(3). Each Borrowing Notice shall be irrevocable and binding on the IESO and shall specify (a) the requested date of the Advance; (b) the principal amount of the Advance, and (c) the Repayment Date of the Advance which shall be no earlier than 28 days and not later than 95 days after the date of the requested Advance. Each Borrowing Notice shall also certify the use of proceeds of the Advance which shall in any case be in accordance with Section 2.3. The OFA will make the principal amount of each Advance available to the IESO in accordance with Article 2.
- (2) On or before the date of the first Advance hereunder, the IESO shall execute and deliver to the OFA a grid promissory note in respect of Advances substantially in the form of Schedule 3 (the “**Grid Note**”). The IESO authorizes the OFA to record on the Grid Note (a) the date and amount of each Advance or Continued Advance; (b) the applicable rate of interest for each Advance or Continued Advance; (c) the Repayment Date of each Advance or Continued Advance; (d) the date and amount of each payment of interest and each payment of principal or portion thereof in respect of each Advance or Continued Advance; and (e) Advances Outstanding. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such Advances and repayments; provided that the failure of the OFA to record any amount, rate or date shall not affect the obligation of the IESO to pay the Advances Outstanding and all interest accrued thereon and any other amounts due under this Agreement.”
7. Section 3.3 “Elections Regarding Advances” of the Credit Agreement is deleted in its entirety and replaced by the following:
- “(1) The IESO may elect to continue all or a portion of the principal amount of any Advance and any amount of interest on such Advance (together, the “**Continued Advance**”) for a further period of at least 28 days and up to a maximum of 95 days beginning on the then current Repayment Date in accordance with Section 3.3(2).
- (2) Each notice to continue an Advance for a further period (an “**Election Notice**”) shall be provided by the IESO to the OFA at least two Business Days prior to the Repayment Date of the Advance (the “**Current Repayment Date**”), and in each case, not later than 10:00 a.m. (Toronto time). Each such Election Notice shall be given substantially in the form of Schedule 2 and shall be irrevocable and binding upon the IESO and shall specify: (a) the Current Repayment Date; (b) the new aggregate total amount of the proposed Continued Advance; (c) the amount of interest or principal, if any, to be paid or re-paid by the IESO with respect to such Advance on the Current Repayment Date; and (d) the new Repayment Date of the proposed Continued Advance, which shall be no earlier than 28 days and not later than 95 days after the Current Repayment Date (the “**New Repayment Date**”). If the IESO fails to deliver an Election Notice to the OFA for any Advance as provided herein, such Advance shall be repayable on the applicable Repayment Date.
- (3) An Election Notice with respect to a proposed Continued Advance may include a Borrowing Notice for a further Advance proposed to be made on the Current Repayment

Date. The Repayment Date of such further Advance shall be the New Repayment Date of the Continued Advance that is specified in the Election Notice. Such Borrowing Notice shall be given substantially in the form of Schedule 2.

- (4) The calculation of interest on a Continued Advance shall be determined in the same manner as an Advance under Section 3.4 and shall be recorded on the grid promissory note in respect of Advances in accordance with Section 3.2(2).
 - (5) Any portion of an Advance not continued for a further period in accordance with Section 3.3(2) shall be repayable on the applicable Repayment Date.”
8. Section 5.2 “Acceleration of Maturity; Recission and Annulment” of the Credit Agreement is deleted in its entirety and replaced by the following:

“If an Event of Default occurs and is continuing, then and in every such case the OFA may at its option, in addition to any other remedy available to the OFA at law, by written notice to the IESO, take any or all of the following actions:

- (a) suspend the right of the IESO to request any further Advance until the Event of Default has been cured to the OFA’s satisfaction or, if the Event of Default is not cured within three (3) Business Days after the date on which written notice of such Event of Default shall have been given to the IESO by the OFA, declare all amounts owing hereunder including all interest accrued to be due and payable immediately, by a notice in writing to the IESO, and upon any such declaration all such amounts shall become immediately due and payable.
 - (b) invoke the Intercept pursuant to section 5.7 of this Agreement to require payment of any amount due and payable under this Agreement.”
9. Section 5.7 “Intercept” is added to the Credit Agreement, stating as follows:

“Section 5.7 Intercept

- (a) The IESO hereby acknowledges that, in accordance with the terms of the letter agreement of November 6th, 2017 herewith entered between the Ministry of Energy, the IESO and the OFA made pursuant to Section 23 of the *Capital Investment Plan Act, 1993* (the “**Intercept Letter**”), the Minister of Finance is entitled to deduct only from those monies appropriated by the Legislature for payment through the Ministry of Energy to the IESO (“**Appropriated Funds**”), amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this Agreement. On the occurrence of an Event of Default relating to a failure by IESO to pay when due any amounts owing hereunder, subject to the OFA’s compliance with any relevant provisions hereof and as set out in the Intercept Letter, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO has failed to pay to the OFA in accordance with the provisions of this Agreement and to pay such amounts directly to the OFA (“**Intercept**”).

- (b) If, after following the process specified in the Intercept Letter (including, without limitation, allowing for a reasonable cure period on the terms specified therein), the OFA determines that it is necessary to request the Minister of Finance to exercise the Intercept, the OFA will give written notice to the Minister of Finance, with a copy to the Ministry of Energy, detailing the IESO's failure to pay when due any amounts owing hereunder and requesting the deduction from the Appropriated Funds of amounts equal to the amounts that the IESO has failed to pay to the OFA under this Agreement.
- (c) The IESO agrees that any notice from the OFA to the Minister of Finance in relation to this section 5.7 (Intercept) may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance and, upon receipt of such notice, an amount equal to the amount that the IESO has failed to pay when due to the OFA on account of indebtedness under this Agreement shall be deducted from the Appropriated Funds and paid to the OFA.
- (d) For further certainty, the OFA acknowledges and agrees that the Intercept as provided for herein and in the Intercept Letter shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than the Ministry of Energy or through Ontario Climate Change Solutions Deployment Corporation.

The parties agree that, with respect to the exercise of the Intercept generally, the terms of this section 5.7 shall be applied consistently with the terms set out in the Intercept Letter which shall apply in full. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms and conditions of the Intercept Letter and the terms and conditions contained in this Agreement, the terms and conditions contained in this Agreement shall prevail."

10. Section 7.9 "Entire Agreement" is added to the Credit Agreement, stating as follows:

"Section 7.9 Entire Agreement

This Agreement as amended from time to time and including the schedules hereto and any other agreements expressly referred to herein, constitutes the whole agreement between the Parties with respect to the matters dealt with in it, and it supersedes any prior agreement, undertakings, discussions and the like respecting the matters dealt with in this Agreement and entered into by the Parties before the date the OFA signs this Agreement."

- 11. Schedule 1 of the Credit Agreement, Form of Borrowing Notice, is deleted in its entirety and replaced by the Form of Borrowing Notice attached hereto as Schedule 1.
- 12. Schedule 2 of the Credit Agreement, Form of Election Notice, is deleted in its entirety and replaced by the Form of Election Notice attached hereto as Schedule 2.
- 13. Schedule 3 of the Credit Agreement, IESO Grid Note, is deleted in its entirety and replaced by the Form of Grid Note attached hereto as Schedule 3.
- 14. For the purposes of this Amending Agreement and its coming into effect:

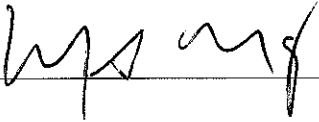
- a. **“Effective Time”** means the time on the Effective Date by which the Transfers of Funds (defined below) have been completed; or such other time as the Parties may subsequently agree to in writing as being the “Effective Time”;
 - b. **“Transfers of Funds”** means those transfers of funds to be completed between the Parties on the Effective Date, being:
 - i. the First Advance as defined under section 3.2(3) of the credit agreement between the Parties in relation to the IESO’s role in the implementation of the OFHP dated November 6, 2017; and,
 - ii. the completion of all Advances described in the Election Notice to be provided by the IESO to the OFA no later than November 17, 2017 (such terms having the meanings defined in the Credit Agreement) that are to be funded under the Credit Agreement on the Effective Date; and,
 - iii. the repayment by the IESO of all Advances Outstanding (as defined in the Credit Agreement) exceeding \$475 million; and,
 - iv. the payment by the IESO to OFA of the interest then owing under the Credit Agreement.
15. The Parties shall endeavour to complete and exchange all usual documentation relating to the Transfers of Funds, and to any other related matters occurring on the Effective Date, prior to 5:00 p.m. on the Effective Date, and in any case no later than the next business day.
16. After the Effective Time, and prior to any further Advances under the Credit Agreement, the IESO shall execute and deliver to the OFA a new grid promissory note in the principal amount of up to \$475,000,000 substantially in the form attached hereto as Schedule 3 (the **“Grid Note”**) and indicating a total principal amount of Advances Outstanding as of the Effective Time. Upon receipt of the new Grid Note delivered hereunder, the OFA will cancel and return the grid promissory note dated November 30, 2016 to the IESO.
17. This Amending Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amending Agreement.

IN ALL OTHER RESPECTS, the Credit Agreement is confirmed by the Parties.

[signature page follows]

IN WITNESS WHEREOF the Parties hereto have executed and delivered this Amending Agreement on the dates set out below, which shall come into effect as of the Effective Time as defined herein.

ONTARIO FINANCING AUTHORITY

Per: 

Date: November 6, 2017.

Name: Michael D. Manning
Title: Executive Director & Chief
Investment Officer
Capital Markets Division

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Date: November _____, 2017.

Name: Kimberly Marshall
Title: Vice President, Corporate Services;
Chief Financial Officer; Treasurer

I have authority to bind the corporation.

SCHEDULE 1 TO AMENDING AGREEMENT NO. 10

FORM OF BORROWING NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the credit agreement between the IESO and the OFA dated January 1, 2005 (as amended, supplemented or restated from time to time, the "**Agreement**", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.2 of the Agreement that the IESO requests an Advance under the Agreement, and, in connection with such request, sets forth below the information relating to such Advance (the "**Proposed Advance**"), as required by Section 3.2(1) of the Agreement:

- (a) The date of the Proposed Advance, being a Business Day is _____;
- (b) The principal amount of the Proposed Advance is \$ _____;
- (c) The Repayment Date of the Proposed Advance is _____. [Not earlier than 28 days and not later than 95 days after the date of the Proposed Advance.]

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

The representations and warranties of the IESO contained in the Agreement are true and correct as at the date hereof.

No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

The IESO has complied or is complying with all terms, covenants and conditions contained in the Agreement.

Any and all funds received under the Agreement will be expended or held solely for the purpose for which they are authorized to be used under the Agreement; no part of the funds to be received pursuant to this Notice shall be used for any other purpose.

Yours truly,

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

Per: _____

Name:

Authorized Signatory

SCHEDULE 2 TO AMENDING AGREEMENT NO. 10

FORM OF ELECTION NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

I. ELECTION NOTICE

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the credit agreement between the IESO and the OFA dated January 1, 2005 (as amended, supplemented or restated from time to time, the "Agreement", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.3 of the Agreement that the IESO elects to continue for an additional term all or a portion of an Advance or a Continued Advance, as the case may be, and in connection with such election sets forth below the information relating to such election as required by Section 3.3(2) of the Agreement:

(a) The date of the proposed election, being a Business Day (being the Current Repayment Date) is _____;

(b) The aggregate amount of the proposed Continued Advance is \$_____, which is comprised of:

- i. principal amount (or portion thereof) of Advance which is to be continued \$_____; and
- ii. accrued interest on Advance which will not be paid on or before the Current Repayment Date \$_____;

(c) The IESO will pay on the Current Repayment Date the following amount with respect to the Advance (if any): \$_____

(d) The New Repayment Date, being a Business Day, applicable to such proposed Continued Advance is _____. [Insert date no earlier than 28 days and not later than 95 days after the Current Repayment Date for the Advance.]

Such election shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

II. BORROWING NOTICE [to be included if applicable]

The IESO gives you notice pursuant to Section 3.3(3) of the Agreement that the IESO requests a further Advance under the Agreement on the Current Repayment Date, with a Repayment Date of the New Repayment Date as specified above, and in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"):

Amount of the Proposed Advance: \$ _____

The total aggregate amount of the proposed Continued Advance and Proposed Advance pursuant to this Notice is: \$ _____

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice, if any, will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

The representations and warranties of the IESO contained in the Agreement are true and correct as at the date hereof.

No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

The IESO has complied or is complying with all terms, covenants and conditions contained in the Agreement.

Any and all funds received under the Agreement are being used solely as authorized under the Agreement and are not being used for any other purpose.

Yours truly,

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:
Authorized Signatory

SCHEDULE 3 TO AMENDING AGREEMENT NO. 10

FORM OF GRID NOTE

INDEPENDENT ELECTRICITY SYSTEM OPERATOR GRID NOTE

Principal Amount: Up to \$475,000,000

Date:

FOR VALUE RECEIVED, INDEPENDENT ELECTRICITY SYSTEM OPERATOR (the "IESO"), incorporated under the laws of the Province of Ontario and having its principal office and place of business at Toronto, Ontario, **PROMISES TO PAY** to or to the order of **ONTARIO FINANCING AUTHORITY ("OFA")** at its offices at Toronto, Ontario or at such other place as the OFA may designate, the principal amount of each and all Advances made by the OFA to the IESO, all as recorded by the OFA on the grid attached to and forming part of this Grid Note, in lawful money of Canada, with interest on each Advance at the rate, calculated in the manner and payable at the times specified in the Credit Agreement (as defined below). All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Credit Agreement.

OFA shall and is unconditionally and absolutely authorized and directed by the IESO to record on the Grid Note (i) the date and amount of each Advance, including any Advance all or a portion of which is continued by election under Section 3.3; (ii) the applicable rate of interest for each Advance; (iii) the repayment date of each Advance; (iv) the date and amount of each payment of interest and each payment of principal in respect of each Advance; and (v) the outstanding principal amount of the Grid Note. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such advances and repayments; provided that the failure of the OFA to record the same shall not affect the obligations of the Borrower to pay such amounts to the OFA.

The outstanding principal amount of each Advance under this Grid Note together with all interest accrued thereon shall become due and payable as specified in the credit agreement dated January 1, 2005 as amended, supplemented or restated from time to time, between the Borrower and the OFA (the "Credit Agreement").

This Grid Note is issued pursuant to, and is subject to and payable in accordance with the provisions of, the Credit Agreement.

This Grid Note is not transferable or negotiable without the prior written consent of the IESO.

The IESO waives presentment for payment and notice of non-payment.

This Grid Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the IESO has executed this Grid Note.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:

Authorized Signatory

Line of Credit Grid Note

Entity : Independent Electricity System Operator
 Loan Limit: \$475,000,000

Project:
 Schedule of loan transactions to:
 Loan Advanced to:

New Loan and/or Rollover									
New Loan or Rollover Date		Principal Advanced or Rollover Amount		Interest Rate		Repayment Date		Total No. Of Days	

From: [Gadi Mayman](#)
To: [Mike Manning](#); [Ronald Kwan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: Fw: OFA : IESO
Date: Thursday, April 13, 2017 8:00:48 AM

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Gadi Mayman](#)
To: [Ken Kandeepan](#); [Ronald Kwan](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#)
Subject: Fwd: IESO_OFA FEP 2017 Credit Letter
Date: Friday, May 12, 2017 11:06:35 PM
Attachments: [IESO_OFA FEP 2017 Credit Letter.docx](#)
[ATT00001.htm](#)

Begin forwarded message:

From: Georgia Ritchie-Wust <georgia.ritchie-wust@ieso.ca>
Date: May 12, 2017 at 2:07:32 PM EDT
To: "gadi.mayman@ofina.on.ca" <gadi.mayman@ofina.on.ca>, "mike.manning@ofina.on.ca" <mike.manning@ofina.on.ca>, "Salman.Qadir@ofina.on.ca" <Salman.Qadir@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>, Kim Marshall <Kim.Marshall@ieso.ca>
Subject: IESO_OFA FEP 2017 Credit Letter

Hi,

At the request of Anthony Martinello, I'm forwarding a copy of the signed letter from Kim Marshall re the above-mentioned subject matter.

If you have any questions please feel free to contact Anthony Martinello directly at anthony.martinello@ieso.ca

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459
Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca[\[ieso.ca\]](#) | Twitter: [IESO_Tweets](#)[\[twitter.com\]](#) | LinkedIn: [IESO](#)[\[linkedin.com\]](#)

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca[\[saveonenergy.ca\]](#) | Twitter: [saveONenergyOnt](#)[\[twitter.com\]](#) | LinkedIn: [saveONenergy](#)[\[linkedin.com\]](#)



Please consider our environmental responsibility before printing this email.

*"We are what we repeatedly do. **Excellence**, therefore, is not an act but a **habit**".*

.....(Aristotle)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



Independent Electricity System Operator

Station A, Box 4474
Toronto, ON M5W 4E5
t 905.403.6900
www.ieso.ca

May 12, 2017.

Mr. Gadi Mayman
Chief Executive Officer
Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario, M7A 1Y7

Re: IESO Credit Requirements for the 2017 Fair Hydro Plan

Dear Mr. Mayman,

As you are aware the Ontario government has announced its intention to implement the proposed Fair Hydro Plan (FHP) to reduce electricity prices for eligible consumers in the province. Proposed legislation was introduced this month for the FHP. The Independent Electricity System Operator (IESO) is preparing to implement the FHP and has determined that in order to support the IESO's role in FHP implementation it will need greater credit liquidity than currently exists.

An existing credit facility between the IESO and the Ontario Financing Authority (OFA) is currently available for \$975 million which includes support for the current Regulated Price Plan (RPP) program. The IESO proposes that a separate and additional credit facility be provided by either the OFA or Ontario Electricity Financial Corporation (OEFC) to support only the FHP credit needs. A separate facility for the FHP is preferable to ensure operational efficiency and interest tracking.

IESO's FHP Credit Requirements and Rationale

Below we have outlined the IESO's expected credit needs including the current OFA facility as follows:

	<u>OFA:IESO Facility</u>	<u>New FHP facility</u>
Current credit facilities	\$975 million	\$ -
Reduction due to FHP	(\$500 million)	\$ -
Increase due to FHP	\$ -	\$2,000 million
Totals Credit Facilities	\$475 million	\$2,000 million

The above \$500 million reduction in the current OFA facility is to eliminate duplicate credit needs and reflect the replacement of the current RPP by the new FHP. In addition, the IESO has had recent discussions with OFA staff to explain the rationale to support the overall \$2,000 million FHP commitment.

We suggest the new FHP credit facility consider the following key provisions:

- o 5 year term - to align with the FHP's initial period of deferral of electricity prices plus a contingency period (i.e. to September 30, 2022);
- o interest charge - to be Province's cost of funds for borrowing with a similar term as determined by OFA / OEFC plus 0.25 percent per annum;
- o Draws - to be based on minimum of 7 days to a maximum of 95 days, to minimize interest costs and permit efficient FHP asset transfers; and
- o Existing \$975 million OFA facility : draws to permit for FHP purposes until a new separate credit agreement for FHP purposes has been made available;

Upon your reply to this letter, the IESO will seek any necessary IESO Board of Directors' approval for the above credit facilities and we will provide such evidence for your records.

We appreciate your continued support and look forward to working with you. Please contact me should you need anything further.

Sincerely,

A handwritten signature in dark ink, appearing to read "K Marshall", written in a cursive style.

Kimberly Marshall
Vice President Corporate Services, Chief Financial Officer and Treasurer
416-969-6232

From: [Anna Strathy](#)
To: [Gadi Mayman](#)
Subject: Fwd: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:32:12 PM

Hi Gadi, please see Ron's email below. Given that you've conditioned the MO on #3, I'm wondering whether we proceed with the exemption as the most expeditious option. It may be worth a call to Ken Hartwick first to confirm that OPG is onside with that approach. What do you think?

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

From: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Date: October 25, 2017 at 4:32:01 PM EDT
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: OFA-IESO Credit Agreements

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Anna Strathy](#)
Subject: IESO Credit Facility and Intercept Provision Exemption
Date: Friday, September 15, 2017 1:56:51 PM
Attachments: [DIRECTIVE Aug 16 \(vAug18LisaMallesSignedOff\) _clean_vFinalClean3.docx](#)
[01 - IESO-OFA - FHP LoC - Intercept Directive v12Clean3.docx](#)

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

DIRECTIVE

MINISTER OF FINANCE

LOANS TO THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

To: Ontario Financing Authority (“OFA”)

Whereas:

Under the *Capital Investment Plan Act, 1993* (“CIPA”), the OFA provides financing to public bodies as directed by the Minister of Finance (“Minister”).

Effective January 1, 2015, the Ontario Power Authority (the “OPA”) and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the “Amalgamation”) with the name Independent Electricity System Operator (“IESO”).

Pursuant to directives dated December 22nd, 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28th, 2016, the Minister approved and directed the OFA to make loans (the “Advances”) to the OPA and the IESO after the Amalgamation from time to time in an aggregate amount not to exceed \$975 million at any time, as considered necessary by the OPA and IESO after the Amalgamation to meet its purposes.

Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.

The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the “Original Credit Facility Agreement”).

The IESO had requested a new revolving credit facility in an amount of up to \$2 billion from the OFA to support the IESO’s role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* (“OFHP Act”). In the same request, the IESO had requested a reduction to its existing credit facility from the current \$975 million to \$475 million.

Pursuant to a directive from the Minister dated June 29, 2017 (the “2017 Directive”), the OFA was directed to provide a new revolving credit facility of up to \$2 billion to the IESO for the purposes of providing short to medium term financing related to the IESO’s role in the implementation of the OFHP Act (the “OFHP Credit Facility”).

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister, Treasury Board or Cabinet. The intercept provision applies to money appropriated by the Legislature for a public body.

The IESO is a public body for the purposes of CIPA.

As there is no operational funding appropriated by the Legislature for the IESO, the intercept provision has no application for OFA loans to the IESO.

Therefore:

The OFA is not required to include an intercept provision in the following two credit facility agreements with the IESO:

- a) the Original Credit Facility Agreement, as may be amended from time to time; and,
- b) the OFHP Credit Facility agreement, as may be amended from time to time.

(together, the “IESO Credit Facility Agreements”)

The IESO Credit Facility Agreements shall remain subject to all other terms and conditions as set out in the applicable directives.

Dated _____, 2017

~~Minister of Finance~~

Per _____

~~The Honourable Liz Sandals~~

~~President of Treasury Board~~

~~Alternate for the Minister of Finance~~

Charles Sousa

Minister of Finance

OFA -- IESO CREDIT FACILITY
MINISTER OF FINANCE DIRECTIVE FOR AN EXEMPTION FROM THE INTERCEPT
PROVISION (“INTERCEPT EXEMPTION DIRECTIVE”)
REQUIRED UNDER THE OFA’S LENDING POLICY

CONTEXT

The IESO had requested a new revolving credit facility in an amount of up to \$2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* (“OFHP Act”). In the same request, the IESO had requested a reduction to its existing credit facility (currently provided under the “Original Credit Facility Agreement”, see Background section) from the current \$975 million to \$475 million.

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO’s request and provide a revolving credit facility to the IESO in an amount of up to \$2 billion (the “OFHP Credit Facility”).

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet]. In accordance with section 23 of the *Capital Investment Plan Act, 1993* (“CIPA”), the intercept provision allows the Minister to deduct amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement from money appropriated by the Legislature for payment to the public body.

Per the requirements of the OFA’s Lending Policy, the OFA is returning to request a Minister’s direction to exempt the requirement to include an intercept provision in the OFHP Credit Facility agreement with the IESO, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The OFA Lending Policy provides the following requirement for unsecured loans to public bodies under CIPA:

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following requirements in relation to the intercept provision:

The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

RECOMMENDATION

- OFA staff recommend the Minister sign the attached Intercept Exemption Directive allowing the OFA to exclude intercept provisions from the OFHP Credit Facility Agreement, as well as the Original Credit Facility Agreement, both of which may be amended from time to time.

- The requested Intercept Exemption Directive would only apply to the two specified IESO credit facilities.

MINISTER'S DIRECTIVE

- The Minister of Finance's Intercept Exemption Directive would authorize the OFA to exempt the Original Credit Facility Agreement and the OFHP Credit Facility agreement, both as amended from time to time, from the OFA Lending Policy requirement to include an intercept provision.

RATIONALE FOR EXEMPTION

- This Intercept Exemption Directive will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the \$475 million facility (to be amended from the current \$975 million facility).
- Including an intercept provision in the credit facility agreements with the IESO would have no practical usefulness as the IESO receives no operational funding from the Province of Ontario.
- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

FISCAL IMPACT

- There is no expected incremental fiscal impact for the Province from providing an exemption from the intercept provision requirement of the OFA Lending Policy.
 - [The IESO is an entity consolidated to the Province and if there were any amounts to intercept, there would be no incremental fiscal impact of having the Intercept Exemption Provision.]

BACKGROUND

The IESO

- The IESO is a not-for-profit corporate entity established in 1998 by the *Electricity Act, 1998*. It is governed by an independent Board of Directors and its Chair and Directors are appointed by the Province.

- The IESO has full statute-based authority for establishing, monitoring and enforcing reliability standards in the province. All the companies that make up the power system in Ontario must meet the IESO's standards.
- Its fees and licences to operate are set by the Ontario Energy Board and it operates independently of all other participants in the electricity market.
- The IESO is a public body for the purposes of CIPA.

OFA Credit Facilities to the IESO

- Pursuant to directives dated December 22nd 2004, October 3rd, 2005, July 28th, 2006, October 14th, 2010, December 18th, 2013, and November 28, 2016, the Minister of Finance (“Minister”) approved and directed the Ontario Financing Authority (“OFA”) to make loans (the “Advances”) to the Ontario Power Authority (the “OPA”) from time to time in an aggregate amount not to exceed \$975 million at any time, as considered necessary by the OPA to meet its purposes.
- Effective January 1, 2015, the OPA and the Independent Electricity System Operator amalgamated and continued as a corporation without share capital under Part II of the *Electricity Act, 1998* (the “Amalgamation”) with the name Independent Electricity System Operator (“IESO”).
- Pursuant to the Amalgamation the obligations of the OPA became obligations of the IESO.
- The terms and conditions governing the Advances are set out in a credit agreement entered into between the OFA and the OPA dated January 1, 2005, as subsequently amended by amending agreements dated February 14, 2005, October 11, 2015, September 27, 2006, July 13, 2007, November 9, 2010, December 20, 2013, December 19, 2014 and November 30, 2016 (as so amended, the “Original Credit Facility Agreement”).

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
August 18, 2017

From: [Pearce, Christopher \(MOF\)](#)
To: [Christina Zhang](#); [Gavin He](#); [Anna Strathy](#)
Subject: IESO Credit facility
Date: Monday, April 03, 2017 9:02:04 AM
Attachments: [Transmittal Memo_IESO Credit Facility_31MAR2017.pdf](#)

DM signed on Friday. With the MO for Minister's sign-off.

P.S. Welcome Anna!

[Christopher Pearce](#)
Senior Policy Advisor
Deputy Minister's Office | Ministry of Finance
p: 416.325.8736 | bb: 647.981.7551
christopher.pearce@ontario.ca

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Télé (416) 325-1595



MAR 31 2017

MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: **Minister's Directives to the OEFC to Provide a Loan and
a Revolving Credit Facility Extension to the IESO**

Attached for your review and signature, as recommended by staff, are Minister's Directives to direct the Ontario Electricity Financial Corporation (OEFC) to continue to provide both a loan and a revolving credit facility to the Independent Electricity System Operator (IESO).

OEFC's mandate includes providing financial assistance to Ontario Hydro successor companies, which includes the IESO.

The IESO has requested that the loan agreement and the revolving credit agreement be extended from the current expiry date of April 30, 2017 to June 30, 2020 (approximately 3-year term), with the loan amount increasing to \$120 million (currently \$90 million) and the revolving credit agreement increasing to \$160 million (currently \$95 million) in order to provide it with flexibility meeting its future cash requirements.

The extension and increase in the loan and revolving credit facility would support the IESO's short and medium term funding needs related to the implementation of its Market Renewals program and provide the IESO with flexibility to manage anticipated and unanticipated changes in funding needs.

Attached is a briefing note for your consideration, as well as Directives for your signature. Staff are available to answer any questions you may have regarding this matter.

Scott Thompson

Attachments

- c. Gadi Mayman
- Ronald Kwan

From: [Ronald Kwan](#)
To: [Anna Strathy](#)
Subject: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 4:32:02 PM

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: [Lisa Stein](#)
To: [John Kim](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:01:55 PM

Would you prefer for me to send it?

From: John Kim
Sent: Tuesday, October 24, 2017 5:00 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Ok, thanks....it is a bit scary sounding but I can live with that.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:57 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I've made a couple of minor edits to your suggested response, below, based on Sarah's e-mail. Based on your earlier e-mail, I will update Amending Agreement #10 to include intercept language as well.

Please copy me on your e-mail to Victor.

Thank you,

Lisa

From: John Kim
Sent: Tuesday, October 24, 2017 4:50 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Okay, I will act on that. I could let them know the following:

“With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.”

Would you suggest any edits to this response?

John

From: Sarah Neville

Sent: Tuesday, October 24, 2017 4:46 PM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein

Sent: Tuesday, October 24, 2017 4:32 PM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079

1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca/jeso.ca | Twitter: [IESO_Tweets/twitter.com](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO/linkedin.com](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Lisa Stein](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:59:57 PM

Ok, thanks....it is a bit scary sounding but I can live with that.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:57 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I've made a couple of minor edits to your suggested response, below, based on Sarah's e-mail. Based on your earlier e-mail, I will update Amending Agreement #10 to include intercept language as well.

Please copy me on your e-mail to Victor.

Thank you,

Lisa

From: John Kim
Sent: Tuesday, October 24, 2017 4:50 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Okay, I will act on that. I could let them know the following:

“With timely execution of the letter agreement **by all parties**, we will move to conclude the FHP credit **facility agreement** and **amending agreement #10 by November 1st**. Also, future amendments **to these agreements** would have to be considered when known at the time. **The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.**”

Would you suggest any edits to this response?

John

From: Sarah Neville

Sent: Tuesday, October 24, 2017 4:46 PM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein

Sent: Tuesday, October 24, 2017 4:32 PM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim

Sent: Tuesday, October 24, 2017 4:28 PM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security

over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Lisa Stein](#)
To: [John Kim](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:56:50 PM

Hi John,

I've made a couple of minor edits to your suggested response, below, based on Sarah's e-mail. Based on your earlier e-mail, I will update Amending Agreement #10 to include intercept language as well.

Please copy me on your e-mail to Victor.

Thank you,

Lisa

From: John Kim
Sent: Tuesday, October 24, 2017 4:50 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Okay, I will act on that. I could let them know the following:

"With timely execution of the letter agreement **by all parties**, we will move to conclude the **FHP credit facility agreement** and **amending agreement #10 by November 1st**. Also, future amendments **to these agreements** would have to be considered when known at the time. **The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.**"

Would you suggest any edits to this response?

John

From: Sarah Neville
Sent: Tuesday, October 24, 2017 4:46 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein

Sent: Tuesday, October 24, 2017 4:32 PM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein

Legal Counsel

Ontario Financing Authority

416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim

Sent: Tuesday, October 24, 2017 4:28 PM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William

Tan <William.Tan@ofina.on.ca>

Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Sarah Neville](#); [Lisa Stein](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:49:38 PM

Okay, I will act on that. I could let them know the following:

“With timely execution of the letter agreement, we will move to conclude the credit facilities agreements. Also, future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim.”

Would you suggest any edits to this response?

John

From: Sarah Neville
Sent: Tuesday, October 24, 2017 4:46 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:32 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Tuesday, October 24, 2017 4:20 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Sarah Neville](#)
To: [Lisa Stein](#); [John Kim](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:46:07 PM

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:32 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains

information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim

Sent: Tuesday, October 24, 2017 4:28 PM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for

further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079

1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca/jeso.ca | Twitter: [IESO_Tweets/twitter.com](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO/linkedin.com](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Lisa Stein](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:35:18 PM

That is my understanding, yes, that the letter agreement will be done for the intercept.

Sure, on your view on the internal approval processes.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:32 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079

1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Lisa Stein](#)
To: [John Kim](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 4:32:22 PM

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim
Sent: Tuesday, October 24, 2017 4:28 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Lisa Stein](#); [Sarah Neville](#); [Sarah Harris](#); [William Tan](#)
Cc: [Anna Strathy](#); [Gavin He](#)
Subject: RE: Finalization of OFA-IESO Credit Agreements
Date: Tuesday, October 24, 2017 5:03:14 PM

I'm indifferent but they will know it didn't come from me. I will just add a sentence to say – Let's aim to get this letter agreement done well ahead of the end of this week or something like that to soften things up a little.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 5:02 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Would you prefer for me to send it?

From: John Kim
Sent: Tuesday, October 24, 2017 5:00 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Ok, thanks....it is a bit scary sounding but I can live with that.

From: Lisa Stein
Sent: Tuesday, October 24, 2017 4:57 PM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

I've made a couple of minor edits to your suggested response, below, based on Sarah's e-mail. Based on your earlier e-mail, I will update Amending Agreement #10 to include intercept language as well.

Please copy me on your e-mail to Victor.

Thank you,

Lisa

From: John Kim

Sent: Tuesday, October 24, 2017 4:50 PM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Okay, I will act on that. I could let them know the following:

“With timely execution of the letter agreement by all parties, we will move to conclude the FHP credit facility agreement and amending agreement #10 by November 1st. Also, future amendments to these agreements would have to be considered when known at the time. The OFA will not make any assurances or representations to the IESO that such amendments would be made as a matter of right.”

Would you suggest any edits to this response?

John

From: Sarah Neville

Sent: Tuesday, October 24, 2017 4:46 PM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John – I agree with Lisa.

We can agree to move forward to conclude the agreements with the intercept by November 1 (assuming all parties agree) and assuming we also get the letter.

Future amendments would have to be considered when known at the time with no assurance or representation made to IESO in the interim that that such amendments will be made as a matter of right. That is why we added the entire agreement clause.

The risk to this path as I see it is that if a future amendment requested by IESO requires a directive, and there is a real possibility that it may, given OPG's current position, this directive may be a challenge to obtain or not obtainable.

Sarah

From: Lisa Stein

Sent: Tuesday, October 24, 2017 4:32 PM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: RE: Finalization of OFA-IESO Credit Agreements

Hi John,

There is no mention in Victor's e-mail about the letter agreement or the intercept provisions. Is he proposing that we finalize the agreements with the intercept provisions included? In this case, the letter agreement will need to be signed first and we will need to tweak the amending agreement.

As we have previously discussed, we are not willing to make assurances regarding further future amendments, especially regarding the intercept requirement. This is the reason I had added in the "Entire Agreement" clause. In my view it is not appropriate to discuss our internal approval processes with the IESO.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

From: John Kim

Sent: Tuesday, October 24, 2017 4:28 PM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: FW: Finalization of OFA-IESO Credit Agreements

Fyi, and pls. let me know if any concern.

Victor's comments seem reasonable to me. They are indicating that the discussion between OPG Trust and IESO has not settled. I do think about any risks that could result from continuing to go down this path and not sure I can come up with any. I wouldn't mind a reiteration from Legal back to Victor on the due process and approvals required on any future amendments to the credit facility or facilities in place [when the discussion between OPG Trust and IESO conclude].

Please keep Gadi in the loop on this. I will keep Ron in the loop.

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]

Sent: Tuesday, October 24, 2017 4:20 PM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: Finalization of OFA-IESO Credit Agreements

Hi John. We have had internal discussions following your and my conversation yesterday afternoon regarding the finalization of the two OFA/IESO credit agreements (Amending Agreement #10 to the existing credit agreement; and the new \$2 billion credit agreement for implementing the Fair Hydro Plan).

As discussed, we need urgently to finalize these credit agreements in order to avoid a funding shortfall for IESO in November relating to implementing the FHP. There will not be sufficient room under the existing OFA credit agreement – with its commitment of \$975 million – to fund the amounts required by IESO in this regard.

Given this urgent funding need, we propose that OFA and IESO finalize the current drafts of the credit agreements and have them executed by both parties no later than Wednesday, November 1 in order to ensure that funds will be available for drawing by IESO in November.

We recognize that the on-going discussions with the OPG Trust about a possible grant of security over IESO's assets in connection with implementing the Fair Hydro Plan may result in the need for further amendments to the OFA-IESO credit agreements. However, we propose to amend the agreements as needed once we actually know what, if anything, is required in this regard.

We would appreciate it if OFA could let us know if it agrees with the above approach by Thursday this week in order that we may each proceed to take the steps required to finalize and execute the agreements, and maintain the timely funding of IESO's needs.

Regards,
Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079

1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca/jeso.ca | Twitter: [IESO_Tweets\[twitter.com\]](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO\[linkedin.com\]](https://www.linkedin.com/company/ieso)

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

This e-mail message and any files transmitted with it are intended only for the named

recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Ronald Kwan](#)
To: [Anna Strathy](#); [Ken Kandeepan](#)
Cc: [Gadi Mayman](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 5:38:02 PM

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

...prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month's discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis -- to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy

Sent: Monday, September 18, 2017 11:02 AM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan

Sent: Monday, September 18, 2017 10:53 AM

To: Anna Strathy <Anna.Strathy@ofina.on.ca>

Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of

an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies

lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Anna Strathy](#)
To: [Ken Kandeepan](#); [Ronald Kwan](#)
Cc: [Gadi Mayman](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 2:40:16 PM

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan

Sent: Friday, September 15, 2017 1:57 PM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Anna Strathy](#)
To: [Gadi Mayman](#)
Cc: [Ken Kandeepan](#); [Ronald Kwan](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:09:29 AM

Will do.

From: Gadi Mayman
Sent: Monday, September 18, 2017 11:09 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Thanks, Anna. Please let Dave know what's happening.

On Sep 18, 2017, at 11:01 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA

lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption

from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Anna Strathy](#)
To: [Gadi Mayman](#)
Cc: [Ken Kandeepan](#); [Ronald Kwan](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:01:41 AM

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Ken Kandeepan](#)
To: [Ronald Kwan](#); [Anna Strathy](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:57:35 AM

Agreed with Ron's response we can put forward an amendment to the OFA Lending Policy, at the next OFA Board meeting.

thanks

Ken k

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:54 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi,

Just saw your response. I sent an email too.

Ron

From: Ken Kandeepan
Sent: September 18, 2017 10:47 AM
To: Anna Strathy
Cc: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 "Security" section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister's exemption should have no impact on IESO's accounting. On

the other hand by not doing so a requirement in the OFA's Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he's hoping for a response to the question below before 1pm today when he'll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive

was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Ken Kandeepan](#)
To: [Anna Strathy](#)
Cc: [Ronald Kwan](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:47:12 AM

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 “Security” section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister’s exemption should have no impact on IESO’s accounting. On the other hand by not doing so a requirement in the OFA’s Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he’s hoping for a response to the question below before 1pm today when he’ll see the Deputy next.

From: Anna Strathy
Sent: Monday, September 18, 2017 10:11 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking

the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Anna Strathy](#)
To: [Ronald Kwan](#)
Cc: [Gadi Mayman](#); [Ken Kandeepan](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:10:57 AM

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Anna Strathy](#); [Ken Kandeepan](#); [John Kim](#)
Subject: RE: IESO Credit Facility and Intercept Provision Exemption
Date: Tuesday, September 19, 2017 8:45:25 AM

Hi Gadi,

We'll follow up with Energy and OFA Legal on that path. John had had previous discussions with OFA Legal, so we'll communicate to them the proposed path too.

Ron

From: Gadi Mayman
Sent: September-18-17 11:28 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

I like the proposed path in the last paragraph of your email, Ron. Let's see if we can make that work.

Gadi

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:38:02 PM
To: Anna Strathy; Ken Kandeepan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

...prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month's discussions by staff with OFA

Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis -- to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi -- in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's

exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan

Sent: Monday, September 18, 2017 10:53 AM

To: Anna Strathy <Anna.Strathy@ofina.on.ca>

Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan

Sent: Friday, September 15, 2017 1:57 PM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Gavin He](#)
To: [Anna Strathy](#)
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14
Date: Friday, June 23, 2017 3:40:50 PM
Attachments: [01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v3.docx](#)
[02 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-CEO-DM.docx](#)
[03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min.doc](#)
[04 - IESO Treasury Policy 2017 - Minister of Finance Approval - Min Response Approval.doc](#)
[05 - Item 8\(iii\) BLACKLINED Treasury Policy June 14 2017.pdf](#)
[05 - Item 8\(iv\) BLACKLINED Schedule A - IESO Treasury Policy.pdf](#)

Hi Anna,

Please find attached the IESO Treasury Policy package for Gadi's review and approval. I am currently waiting for Ron's sign-off and after that I will bring you the package as well.

Please let me know if you have any questions.

Thanks,
Gavin He

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.

Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs

Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca/jeso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

Conservation: www.saveONenergy.ca/saveonenergy.ca | Twitter: [saveONenergyOnt](https://twitter.com/saveONenergyOnt) |

LinkedIn: [saveONenergy](https://www.linkedin.com/company/saveONenergy)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act*, 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
 - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- On May 31, 2017, the government passed the OFHP Act to enable the implementation of the Ontario Fair Hydro Plan, which will lower electricity bills by 25 per cent on average for eligible residential customers. Eligible farms and small businesses will also receive benefits (essentially for those eligible for the Regulated Price Plan).
- Under the OFHP Act, in the early years of the plan a portion of the Global Adjustment charge to ratepayers will be deferred for recovery to the future and the IESO will incur a monthly funding shortfall, as.

- The IESO under the OFHP Act has a right to recover the deferred charges (or “regulatory asset”), which is expected to be sold by IESO to a financing entity established by OPG.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.
 - o There is expected to be initial and ongoing IESO cash flow requirement timing differences.
 - The OPG SPV is not anticipated to be established and able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017 (planned for later in summer 2017; however, exact timing is subject to actual implementation).
 - Even once the SPV is set up to borrow, there is expected to be timing differences between the IESO’s monthly settlement process when it has to pay generators and when the SPV purchases the asset from IESO.
 - Also, under the legislation, OPG’s SPV is not required to purchase any portion of the regulatory asset.
 - o The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
 - o IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA’s investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO’s investment and borrowing activities.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- Given that the IESO’s financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.

- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA

With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 23, 2017

Ontario Financing Authority

1 Dundas Street West
Suite 1400
Toronto ON M7A 1Y7

(416) 325-8000

Office ontarien de financement

1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7



June 26, 2017

MEMORANDUM TO:

Scott Thompson
Deputy Minister of Finance

FROM:

Gadi Mayman
Chief Executive Officer

SUBJECT:

Minister's Approval of IESO's Treasury Policy

Attached for your review and consideration is a memo to the Minister of Finance recommending the Minister of Finance to approve the Independent Electricity System Operator's (IESO) Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
 - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Attached is a briefing note for your consideration, as well as an approval letter for the Minister's signature. OFA staff are available should you require a further briefing or have any questions.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595



MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: Minister's Approval of IESO's Treasury Policy

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
 - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

The Honorable Charles Sousa
Page 2

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

c. Gadi Mayman
Ronald Kwan



7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7^e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

Anthony Martinello
Director, Treasury and Pension Operations
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Re: IESO Treasury Policy (version June 14, 2015)

Dear Mr. Martinello,

I am writing in regards to your request for approval of the IESO's Treasury Policy approved by its Board of Directors on June 14, 2015.

I am pleased to provide my approval of this policy.

Thank you for your attention to this matter. Please continue to work with staff from the Ontario Financing Authority on any future issues pertaining to the IESO Treasury Policy.

Sincerely,

Charles Sousa
Minister

IESO Statement of Investment, Borrowing and Financial Management Policies and Procedures (“Treasury Policy”)			
Office of Primary Responsibility	Treasury, Corporate Services	Policy #	Treasury 01
Subject.:	IESO TREASURY POLICY	Page:	1 of 4, and Schedule A
Approved by	Board of Directors	Effective	June 24, 2015
		Revised	<u>June 14, 2017</u> ~~n/a~~

1. DEFINITIONS

CFO: means the IESO’s Chief Financial Officer

IESO: means the Independent Electricity System Operator.

Treasury Policy: means this policy document, and means the Statement of Investment, Borrowing and Financial Management Policies and Procedures as referenced in Ontario Regulation 280 / 14.

2. PURPOSE:

The purpose of this Treasury Policy is as follows:

- a) To adopt a policy for the sound and efficient management of the IESO’s borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- b) To make investments when the investments are advisable for the sound and efficient management of the IESO’s financial affairs;
- c) To adhere to Ontario Regulation 280 / 14 made under the Electricity Act, 1998, as amended;

3. SCOPE

This Treasury Policy applies to all treasury related activities of the IESO (corporation) and the IESO's administered markets.

This Treasury Policy must be reviewed on an annual basis.

4. OUT OF SCOPE

This Treasury Policy does not apply to any activities pertaining to the IESO's pension plans¹.

Nothing in this Treasury Policy restricts the IESO's authority to enter into contracts referred to in section 25.32 or 25.35 of the Electricity Act.

5. RESPONSIBILITIES

5.01 ~~Director~~**Manager**, Treasury and Pension Operations (or equivalent) is responsible for:

- Manage all day-to-day treasury activities and ensure adherence to this Treasury Policy;
- To establish documented treasury processes and procedures for internal control purposes;
- As necessary, recommend to the CFO any appropriate changes to Treasury Policy;
- Provide the CFO on a timely basis with any policy violations, concerns, or issues;
- To provide a report on the IESO's treasury activities to the CFO and IESO Board of Directors at least each quarter.

5.02 **Chief Financial Officer** is responsible for:

- Establish prudent and effective treasury and risk management practices;
- To manage the relationships between government and the IESO regarding all treasury matters;
- Reviewing any proposed changes to the Treasury Policy before submission to the IESO Board of Directors;

¹ Includes the IESO Registered Pension Plan and IESO Supplementary Employee Retirement Plan (SERP reserve).

5.03 **IESO Board of Directors** are responsible for:

- To adopt a Treasury Policy setting out policies for the IESO's borrowing, investment, foreign exchange, financial affairs, and other treasury related activities;
- To ensure any proposed change to the Treasury Policy is sent to the Minister of Finance for approval

6. PERMITTED ACTIVITIES

6.1 Permitted Borrowings:

- a) All new borrowing facilities must be approved by the IESO Board of Directors.
- b) The CFO will renew the annual SERP's letter of credit posted with the SERP trustee.
- c) All borrowing facilities must be denominated in Canadian dollars.
- d) The IESO shall establish bank accounts' overdraft capacity and services with its bank(s).
- e) The IESO may only borrow from the following list of lenders:
 - i. Government of Canada, Canadian provincial governments or any of their agencies; and
 - ii. Canadian Schedule I or Schedule II or Schedule III financial institutions;
- f) As determined by the CFO, the IESO may obtain a credit rating(s) to assist the IESO with establishing the IESO's creditworthiness to prospective lenders or counterparties.
- g) Borrowing facilities shall only be utilized for the following purposes:
 - i. To ensure the IESO corporation's operating liquidity and for purchases of IESO corporation's capital assets;
 - ii. To ensure liquidity to complete the IESO's mandate for the Ontario electricity markets' settlements including the settlements for any Ontario government programs that the IESO is a service provider;
 - ~~iii.~~ To ensure funding of any amounts, including variance accounts and timing differences, as prescribed by the Ontario Electricity Act and any Ontario regulation;
 - ~~iii,iv.~~ To ensure funding of any amounts resulting from or required by Ontario's Fair Hydro program;
 - ~~iv,v.~~ To ensure funding as may be necessary to manage timing differences between the receipts and payments with respect to IESO procurement contracts, electricity markets transactions, Smart Metering, and taxes; and

vi. As directed by the Minister of Energy;

6.2 Permitted Investments and Forward Foreign Exchange Contracts:

- a) See **Schedule “A”: Approved Financial Instruments Listing** for a listing of permitted investments and counterparties.
- b) Investments or counterparties not listed in **Schedule “A”** are prohibited.
- c) All investments must be denominated in either Canadian or US dollars.

End.

Schedule "A"
Independent Electricity System Operator ("IESO")
Approved Financial Instruments Listing

<i>Permitted Categories of Investment Products or Hedging Financial Instrument</i>	<i>Allowable Counterparties or Issuers</i>	<i>Minimum S&P's Rating or equivalent (¹)</i>	<i>Maximum Face Amounts per counterparty or issuer</i>	<i>Max Term Limit</i>
1. Deposits held in bank accounts 2. Term Deposits 3. Bankers' Acceptances 4. Bearer Deposit Notes 5. Certificates of Deposit 6. Guaranteed Investment Certificates	Canadian Schedule I Banks	Short term: "A-1+"	~~\$420~~ 500 million per counterparty;	65 days
7. Treasury Bills 8. Bonds 9. Debentures 10. Promissory Notes	Government of Canada Or Canadian Provincial Government, Or Government Agency (fully guaranteed by the Government of Canada or Provincial government)	TBills and Promissory Notes: "A-1+" Bonds and Debentures: "AA-"	Government of Canada and Province of Ontario: unlimited Other: \$500million	365 days
11. US\$: Spot Market Purchases	Canadian Schedule I Banks	Short term: "A-1+"	The total estimated US\$ expenditures within the next 100 days. Maximum of US\$5million	100 days
12. US \$: Forward Foreign Exchange Contracts	Canadian Schedule I Banks	Up to 1 year: "A-1+" Long term: "AA-"	The total estimated US\$ expenditures in the approved IESO business plan (annual expenses and capital expenditures to meet contractual obligations) less any US\$ currency held by the IESO. Maximum of US\$25million	25 months (²)

¹ All counterparties must have at least two (2) ratings that meet the IESO's minimum S&P's rating or equivalent (e.g. S&P, Moody or DBRS).

² US\$ spot, and US\$ Forward Foreign Exchange Contracts will be utilized to manage foreign exchange risk and not to engage in speculative trading.

From: [Gavin He](#)
To: [Anna Strathy](#)
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14
Date: Friday, June 23, 2017 4:12:17 PM
Attachments: [01 - IESO Treasury Policy 2017 - Minister of Finance Approval - BN v3.docx](#)
[02 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-CEO-DM.docx](#)
[03 - IESO Treasury Policy 2017 - Minister of Finance Approval - Memo-DM-Min_v2.doc](#)
[04 - IESO Treasury Policy 2017 - Minister of Finance Approval - Min Response Approval v2.doc](#)

Hi Anna,

Ron just signed off on the attached package. I will bring it up for Gadi's signature now.

Regards,
Gavin He

From: Gavin He
Sent: Friday, June 23, 2017 3:41 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO Treasury Policy for Approval - Reg 280/14

Hi Anna,

Please find attached the IESO Treasury Policy package for Gadi's review and approval. I am currently waiting for Ron's sign-off and after that I will bring you the package as well.

Please let me know if you have any questions.

Thanks,
Gavin He

From: Anna Strathy
Sent: Tuesday, June 20, 2017 3:30 PM
To: John Kim <John.Kim@ofina.on.ca>
Subject: FW: IESO Treasury Policy for Approval - Reg 280/14

As requested.

From: Gadi Mayman
Sent: Monday, June 19, 2017 6:16 PM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Fw: IESO Treasury Policy for Approval - Reg 280/14

From: David Barrett <david.barrett@ieso.ca>
Sent: Monday, June 19, 2017 6:13 PM
To: Charles Sousa (MOF)
Cc: Scott Thompson (CAB); Gadi Mayman
Subject: IESO Treasury Policy for Approval - Reg 280/14

Dear Minister Sousa:

On behalf of the IESO, I am sending the attached IESO Treasury Policy and Schedule A (version June 14, 2017) for your review and approval.

Should you have questions on this, please contact either Anthony Martinello, Kimberly Marshall or John Rattray whose information is contained in the accompanying letter.

Sincerely,
David Barrett

David Barrett, CPA, CA | Supervisor, Government Affairs

Independent Electricity System Operator (IESO) | T: (416) 969-6224 | M: (905) 601-6481
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) | LinkedIn: [IESO](https://www.linkedin.com/company/ieso)

Conservation: www.saveONenergy.ca | Twitter: [saveONenergyOnt](https://twitter.com/saveONenergyOnt) |

LinkedIn: [saveONenergy](https://www.linkedin.com/company/saveONenergy)

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

MINISTER OF FINANCE APPROVAL OF IESO'S UPDATED TREASURY POLICY

ISSUE

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act*, 1998, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

- Under the Regulation, the IESO is required to maintain investment, borrowing and financial management policies and procedures.
- The Treasury Policy was last approved by the Minister of Finance in 2015.
- Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

RECOMMENDATION

OFA staff have reviewed the changes proposed to the Treasury Policy and recommend that it be approved.

- The changes proposed would permit IESO borrowing facilities to be used to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").
- No fiscal costs to the government are anticipated from the approval of the proposed updated policy as the IESO will continue its operations and cost recovery under the OFHP Act and from the Ontario Energy Board.

KEY CHANGES IN THE TREASURY POLICY

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the *Ontario Fair Hydro Plan Act, 2017*.
 - This change is a result of the recent passing of the OFHP Act.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

CONSIDERATIONS

- On May 31, 2017, the government passed the OFHP Act to enable the implementation of the Ontario Fair Hydro Plan, which will lower electricity bills by 25 per cent on average for eligible residential customers. Eligible farms and small businesses will also receive benefits (essentially for those eligible for the Regulated Price Plan).
- Under the OFHP Act, in the early years of the plan a portion of the Global Adjustment charge to ratepayers will be deferred for recovery to the future and the IESO will incur a monthly funding shortfall, as.

- The IESO under the OFHP Act has a right to recover the deferred charges (or “regulatory asset”), which is expected to be sold by IESO to a financing entity established by OPG.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing.
 - o There is expected to be initial and ongoing IESO cash flow requirement timing differences.
 - The OPG SPV is not anticipated to be established and able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017 (planned for later in summer 2017; however, exact timing is subject to actual implementation).
 - Even once the SPV is set up to borrow, there is expected to be timing differences between the IESO’s monthly settlement process when it has to pay generators and when the SPV purchases the asset from IESO.
 - Also, under the legislation, OPG’s SPV is not required to purchase any portion of the regulatory asset.
 - o The IESO is expected to enter into a revolving credit agreement with the Ontario Financing Authority to manage these cash flow timing differences.
- Furthermore, the IESO, as a settlement agency, collects funds from electricity users and makes payments to generators, transmitters and conservation programs. These balances are deposited in accounts for a period ranging from a few days to a few months. Interest revenue is earned by the IESO.
 - o IESO has stated that since the market price of electricity has increased since 2014 by 16%-19%, it has resulted in IESO managing increased levels of cash flows. This larger limit allows IESO to better manage these increasing cash flows.

BACKGROUND

- The IESO and the former Ontario Power Authority (OPA) merged on January 1, 2015, into an amalgamated entity, also called the IESO.
- Prior to the amalgamation, the IESO was not subject to any regulations pertaining to its borrowing and investment activities. However, the former OPA was subject to Ontario Regulation 423/04 which provided oversight on the OPA’s investment and borrowing activities and required that the OPA submit to the Minister of Finance its Treasury Policy, and any subsequent changes, for approval.
- In December 2014, Ontario Regulation 423/04 was repealed and replaced in December 2014 with Ontario Regulation 280/14 which outlines the specific parameters governing the IESO’s investment and borrowing activities.
- On June 15, 2015, LRC and Cabinet approved amendments to Ontario Regulation 280/14 to allow the IESO to continue its normal business operations including continued investment in securities that have been issued or guaranteed by the federal US government, manage foreign exchange risk, and continue managing its pension plans as it has in the past without any additional restrictions.
- Given that the IESO’s financial results are fully consolidated on the books of the Province, and that the IESO has credit facilities with the Province (through OEFC and OFA), the regulation is intended to provide the Minister of Finance with oversight over the financial investment and borrowing plans of the amalgamated entity.

- The regulation also allows the IESO to borrow for general corporate purposes (which includes borrowing for pension contributions, capital expenditures, etc.), consistent with the terms of its credit facility with the Ontario Electricity Financial Corporation (OEFC).

Corporate and Electricity Finance Division, OFA

With input from: Capital Markets Division, OFA
Risk Control Division, OFA

June 23, 2017

Ontario Financing Authority

1 Dundas Street West
Suite 1400
Toronto ON M7A 1Y7

(416) 325-8000

Office ontarien de financement

1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7



June 26, 2017

MEMORANDUM TO:

Scott Thompson
Deputy Minister of Finance

FROM:

Gadi Mayman
Chief Executive Officer

SUBJECT:

Minister's Approval of IESO's Treasury Policy

Attached for your review and consideration is a memo to the Minister of Finance recommending the Minister of Finance to approve the Independent Electricity System Operator's (IESO) Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for the Minister of Finance's approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
 - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Attached is a briefing note for your consideration, as well as an approval letter for the Minister's signature. OFA staff are available should you require a further briefing or have any questions.

Gadi Mayman

Attachments

c. Ronald Kwan

Ministry of Finance

Office of the
Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances

Bureau du
sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto ON M7A 1Y7
Tél (416) 325-1590
Téléc (416) 325-1595



MEMORANDUM TO: The Honourable Charles Sousa
Minister of Finance

FROM: Scott Thompson
Deputy Minister

SUBJECT: Minister's Approval of IESO's Treasury Policy

Attached for your review and consideration is the Independent Electricity System Operator's (IESO) updated Treasury Policy.

As prescribed under Ontario Regulation 280/14 ("Regulation") under the *Electricity Act, 1998*, the IESO has submitted an updated IESO Treasury Policy ("Treasury Policy") for your approval.

Under the Regulation, the Minister of Finance may approve the proposed statement or refer it back to the IESO for further consideration. If the Minister of Finance does not approve the proposed statement and does not refer it back to the IESO for further consideration within 60 days, the Minister shall be deemed to have approved the IESO's proposed Treasury Policy.

The revised Treasury Policy incorporates the following two changes:

1. Permit borrowings to ensure funding of any amounts resulting from or required under the Ontario Fair Hydro Plan Act, 2017.
 - This change is a result of the recent passing of the Ontario Fair Hydro Plan Act, 2017.
2. Increase counterparty exposure to Schedule A Canadian Banks from the current \$420million to \$500 million, an increase of \$80 million exposure per counterparty.
 - This ensures that the IESO has flexibility to efficiently manage its cash accounts as evolving business and increasing electricity prices in recent years requires IESO to manage increased levels of cash flows and seek appropriate short-term investments.

No fiscal costs to the government are anticipated from the approval of the policy as the IESO will continue its operations and cost recovery from the Ontario Energy Board as usual.

Staff at the Ontario Financing Authority have reviewed and recommend your approval of the IESO Treasury Policy.

Attached is a briefing note for your consideration, as well as an approval letter for your signature. OFA staff are available should you require a further briefing or have any questions.

Scott Thompson

Attachments

- c. Gadi Mayman
Ronald Kwan



7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Telephone: 416-325-0400
Facsimile: 416-327-0374

7^e étage, Édifice Frost Sud
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone: 416-325-0400
Télécopieur: 416-327-0374

Anthony Martinello
Director, Treasury and Pension Operations
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Re: IESO Treasury Policy (version June 14, 2017)

Dear Mr. Martinello,

I am writing in regards to your request for approval of the IESO's Treasury Policy approved by its Board of Directors on June 14, 2017.

I am pleased to provide my approval of this policy.

Please continue to work with staff from the Ontario Financing Authority on any future issues pertaining to the IESO Treasury Policy.

Sincerely,

Charles Sousa
Minister

From: [John Kim](#)
To: [Sarah Harris](#); [Sarah Neville](#); [Lisa Stein](#)
Cc: [Anna Strathy](#)
Subject: RE: IESO and intercept
Date: Wednesday, September 20, 2017 8:09:09 AM
Attachments: [IESO-OFA - FHP LoC - Intercept_Sep19-2017.docx](#)

Hi,

Here's the note Ron shared with Steen Hume at Energy.

Thanks,

John

From: Sarah Harris
Sent: Tuesday, September 19, 2017 12:16 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO and intercept

Hi Sarah N. and John,

I'm also available during this timeframe.

Thanks,
Sarah H.

From: Sarah Neville
Sent: Tuesday, September 19, 2017 12:03 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Subject: RE: IESO and intercept

OK – I am free any time before 3pm.

Thanks

Sarah

From: John Kim
Sent: Tuesday, September 19, 2017 12:00 PM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: RE: IESO and intercept

Thanks, I would like us to decide on a path forward before engaging or informing IESO. Let's aim to meet this afternoon.

From: Sarah Neville

Sent: Tuesday, September 19, 2017 11:50 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Subject: IESO and intercept

Hi John –

I met with Gadi this morning after we spoke. He confirmed that the Directive will not be forthcoming from the Minister. We determined, as you had flagged for us, that the only approach is to reinsert the intercept provision back into the agreement because this complies with the OFA Lending Policy. The other documentation requirements of the policy will also need to be met with respect to the IESO and Ministry of Energy agreeing to the concept of the intercept.

Given that there is currently no appropriation authority for the IESO, we would propose, in lieu of an MOU to have a simple tripartite letter (OFA, IESO, and Energy) wherein all parties agree that in the event funds may in the future be appropriated, IESO and Energy agree to the application of the intercept of such funds (in accordance with the OFA's Policy).

There will need to be some high level discussions at IESO and Energy to make sure that there is the buy-in for this approach. How would you suggest the OFA move this forward?

Please let me know if you have questions or would like to discuss further.

Thanks very much,

Sarah

Sarah Neville
Director, Legal Branch

Ontario Financing Authority

1 Dundas Street West, Suite 1200

Toronto ON M7A 1Y7

Phone: (416) 325-8754

Email: Sarah.Neville@ofina.on.ca

BACKGROUND NOTE
OFA -- IESO CREDIT FACILITY & THE INTERCEPT PROVISION REQUIRED
UNDER THE OFA'S LENDING POLICY

The IESO had requested a new revolving credit facility in an amount of up to \$2 billion from the OFA to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act").

On June 29, 2017, the OFA received a directive from the Minister to accommodate the IESO's request and provide a revolving credit facility to the IESO in an amount of up to \$2 billion (the "OFHP Credit Facility").

Pursuant to the OFA Lending Policy, the OFA is required to include an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis, unless otherwise directed by the Minister of Finance [or Treasury Board or Cabinet].

In accordance with section 23 of the *Capital Investment Plan Act, 1993* ("CIPA"), the intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body, amounts equal to any amounts the public body fails to pay to the OFA under a loan agreement.

Per the requirements of the OFA's Lending Policy, the OFA has reached out to the Ministry of Energy and IESO to fulfill the requirement to include an intercept provision in credit facility agreements with the IESO.

- The OFA Lending Policy, as approved by the OFA Board, provides the following requirement for unsecured loans to public bodies under CIPA:

Except where otherwise directed by the Minister of Finance, Treasury Board or Cabinet, and prior to the OFA making any loan to a public body, the OFA will [e]nsure that it has an appropriate intercept in place for the loan.

- The OFA Lending Policy also includes the following intercept provision requirement:

The public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA.

- The new FHP credit facility, with the required intercept clause, will enable the IESO to fulfil its commitments under the OFHP Act as the IESO will have to finance for a short or medium term period the funding shortfalls in the implementation of the OFHP Act, as well as the continued implementation of the market support function for the IESO through the \$475 million facility (to be amended from the current \$975 million facility) which will also require the intercept clause to be added.
- Including an intercept provision in the credit facility agreements with the IESO is expected to have no practical impact as the IESO receives no appropriations from the Province of Ontario [Energy to confirm], but would bring the lending facilities in line with the requirements of the OFA Lending Policy and be consistent with CIPA.

Electricity Finance Branch / Corporate and Electricity Finance Division / Ontario Financing Authority
September 19, 2017

From: [Whitfield, Tobias P. \(MOF\)](#)
To: [Sarah Neville](#); [Lisa Stein](#); [John Kim](#); [William Tan](#)
Cc: [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 10:14:52 AM

I agree that Sarah's question is an important one. What is the purpose of the security interest? I didn't know that the Trust was going to be a creditor of IESO?

Is there some background on that issue?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Sarah Neville [<mailto:Sarah.Neville@ofina.on.ca>]
Sent: October 20, 2017 10:13 AM
To: Stein, Lisa (OFA); Kim, John (OFA); Tan, William (OFA)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

I agree with Lisa re intercept.

As a sidebar, not an OFA issue and way beyond my expertise, but is there any concern/discussion that the Trust, if given a first priority over ALL the asset of the IESO could potentially enforce a security interest and liquidate a significant entity responsible for overseeing the supply of electricity into Ontario? Is anyone weighing in on this question -IESO/MOE?

Sarah

From: Lisa Stein
Sent: Friday, October 20, 2017 10:02 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.

I've copied Toby from MOF Legal as a heads up.

Lisa

From: John Kim
Sent: Friday, October 20, 2017 8:08 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

“DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.”

Thanks,

John

From: John Kim
Sent: Friday, October 06, 2017 10:16 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 27, 2017 11:50 AM

To: McKinlay, Tom (MAG)

Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim

Sent: Monday, September 25, 2017 2:03 PM

To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim

Sent: Thursday, September 21, 2017 11:42 AM

To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>

Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>

Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: [Lisa Stein](#)
To: [Sarah Neville](#); [John Kim](#)
Cc: [Sarah Harris](#); [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 10:51:20 AM

I agree with Sarah and Toby.

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations

Independent Electricity System Operator (IESO) | T: 905-403-6944

Station A, Box 4474, Toronto, ON, M5W 4E5

www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Sarah Neville](#); [Lisa Stein](#)
Cc: [Sarah Harris](#); [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 10:43:42 AM

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 21, 2017 4:07 PM

To: Anthony Martinello

Cc: Sarah Harris; Victor Buza; Sarah Neville

Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, September 20, 2017 9:58 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>

Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 20, 2017 9:44 AM

To: Anthony Martinello

Cc: Sarah Harris

Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[[ieso.ca](http://www.ieso.ca)](na01.safelinks.protection.outlook.com)

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Sarah Neville](#)
To: [John Kim](#); [Lisa Stein](#)
Cc: [Sarah Harris](#); [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 10:36:42 AM

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:13 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:05 AM

To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Tuesday, September 26, 2017 10:04 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[\[na01.safelinks.protection.outlook.com\]](mailto:na01.safelinks.protection.outlook.com)

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any

dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Sarah Neville](#); [Lisa Stein](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 10:15:38 AM

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 21, 2017 4:07 PM

To: Anthony Martinello

Cc: Sarah Harris; Victor Buza; Sarah Neville

Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, September 20, 2017 9:58 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>

Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 20, 2017 9:44 AM

To: Anthony Martinello

Cc: Sarah Harris

Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
[www.ieso.ca\[ieso.ca\]\[na01.safelinks.protection.outlook.com\]](http://www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com])

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Sarah Neville](#)
To: [Lisa Stein](#); [John Kim](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 10:12:32 AM

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.
Appreciate your efforts to co-ordinate a timely approval.
Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[\[na01.safelinks.protection.outlook.com\]](mailto:na01.safelinks.protection.outlook.com)

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any

dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Sarah Neville](#)
To: [Lisa Stein](#); [John Kim](#); [William Tan](#)
Cc: [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 10:12:52 AM

I agree with Lisa re intercept.

As a sidebar, not an OFA issue and way beyond my expertise, but is there any concern/discussion that the Trust, if given a first priority over ALL the asset of the IESO could potentially enforce a security interest and liquidate a significant entity responsible for overseeing the supply of electricity into Ontario? Is anyone weighing in on this question -IESO/MOE?

Sarah

From: Lisa Stein
Sent: Friday, October 20, 2017 10:02 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.

I've copied Toby from MOF Legal as a heads up.

Lisa

From: John Kim
Sent: Friday, October 20, 2017 8:08 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

"DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and

OEFC as all are unsecured pari-passu.”

Thanks,

John

From: John Kim

Sent: Friday, October 06, 2017 10:16 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]

Sent: Friday, October 06, 2017 10:07 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>

Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 27, 2017 11:50 AM

To: McKinlay, Tom (MAG)

Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: [Lisa Stein](#)
To: [John Kim](#); [Sarah Neville](#); [William Tan](#); [Sarah Neville](#)
Cc: [Anna Strathy](#); [Tobias P. Whitfield \(MOF\)](#)
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 10:02:25 AM

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.

I've copied Toby from MOF Legal as a heads up.

Lisa

From: John Kim
Sent: Friday, October 20, 2017 8:08 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

“DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.”

Thanks,

John

From: John Kim
Sent: Friday, October 06, 2017 10:16 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: [Lisa Stein](#)
To: [John Kim](#); [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 4:29:56 PM

Hi John,

Yes, your understanding is correct. There are currently no “exceptions” to or specific “carve outs” from the intercept requirement in the Policy and I agree with Toby. I was trying to address the question you had raised in your earlier e-mail.

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 4:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Lisa, Toby,

I want to clarify that based on the approach we are moving forward with, the understanding of the OFA Lending Policy should be such that where there are no appropriation by Legislature, there is nothing contemplated by the OFA Lending Policy to intercept. Some of us in CEFD are a bit concerned about the wording ‘carve-outs’ and ‘perhaps’ below. I think Toby referred to ‘carve-outs’ to refer to exceptions to what is subject to the intercept. With the draft letter agreement, we are taking a position that there is nothing to intercept and that we are agreeing to put the intercept clause in as in the future there could be appropriations by Legislature for the IESO at which point, it would become necessary in the future which would be a prudent thing to have.

I was getting Ron in the loop as potentially ready to manage the process with OPG.

Let me know pls. if I am off base on any of the above.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under “Conditions Precedent”, the OFA Lending Policy provides that the OFA must

ensure that it has an “appropriate” intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for ‘carve-outs’ in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim

Sent: Tuesday, September 26, 2017 11:24 AM

To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi,

I’m happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA’s Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]

Sent: Tuesday, September 26, 2017 11:01 AM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Although I am sympathetic to Anthony’s concerns, I am not sure that the OFA lending policy leaves

room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by

IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (<Lisa.Stein@ofina.on.ca> <Lisa.Stein@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Tuesday, September 26, 2017 10:04 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 21, 2017 4:07 PM

To: Anthony Martinello

Cc: Sarah Harris; Victor Buza; Sarah Neville

Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, September 20, 2017 9:58 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>

Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[\[na01.safelinks.protection.outlook.com\]](mailto:na01.safelinks.protection.outlook.com)

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Lisa Stein](#); [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 4:03:12 PM
Attachments: [Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean.docx](#)

For Toby's information, attached the draft letter agreement.

From: John Kim
Sent: Tuesday, September 26, 2017 4:03 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Lisa, Toby,

I want to clarify that based on the approach we are moving forward with, the understanding of the OFA Lending Policy should be such that where there are no appropriation by Legislature, there is nothing contemplated by the OFA Lending Policy to intercept. Some of us in CEFD are a bit concerned about the wording 'carve-outs' and 'perhaps' below. I think Toby referred to 'carve-outs' to refer to exceptions to what is subject to the intercept. With the draft letter agreement, we are taking a position that there is nothing to intercept and that we are agreeing to put the intercept clause in as in the future there could be appropriations by Legislature for the IESO at which point, it would become necessary in the future which would be a prudent thing to have.

I was getting Ron in the loop as potentially ready to manage the process with OPG.

Let me know pls. if I am off base on any of the above.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under "Conditions Precedent", the OFA Lending Policy provides that the OFA must ensure that it has an "appropriate" intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for 'carve-outs' in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim

Sent: Tuesday, September 26, 2017 11:24 AM

To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]

Sent: Tuesday, September 26, 2017 11:01 AM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (<Lisa.Stein@ofina.on.ca> <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM

To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[\[na01.safelinks.protection.outlook.com\]](mailto:na01.safelinks.protection.outlook.com)

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

I am writing in relation to the Independent Electricity System Operator's (IESO) request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*.

Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. The intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement. The OFA, IESO and the Ministry of Energy ("MOE") acknowledge and confirm that at this time there are no amounts appropriated by the Legislature for the IESO [Energy to confirm] and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment to the IESO in the future.

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement"), on an unsecured basis, the OFA requires the Ministry of Energy ("MOE") and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing \$975 million credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and MOE agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a "Loan Agreement"; together, the "Loan Agreements"):
 - o Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and MOE agree that in the event that the Legislature appropriates any funds for payment to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the "intercept provision").
 - o Under the intercept provision, which shall be included in the Loan Agreements, the IESO also agrees that any notice from the OFA to the Minister of Finance in relation to its failure to pay under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.
 - o Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with MOE and seek MOE's support in getting the IESO to pay the amounts owing within a reasonable cure period.

- o Upon receipt of notice from the OFA that the IESO has failed to pay in accordance with the provisions of a Loan Agreement, MOE will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO, including the intended purpose and expected timing of such payments to be made by MOE. Upon request, MOE will provide similar information to the Minister of Finance.
- o MOE acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment to the IESO, MOE will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance's direction.

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

From: [John Kim](#)
To: [Lisa Stein](#); [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 4:02:35 PM

Hi Lisa, Toby,

I want to clarify that based on the approach we are moving forward with, the understanding of the OFA Lending Policy should be such that where there are no appropriation by Legislature, there is nothing contemplated by the OFA Lending Policy to intercept. Some of us in CEFD are a bit concerned about the wording 'carve-outs' and 'perhaps' below. I think Toby referred to 'carve-outs' to refer to exceptions to what is subject to the intercept. With the draft letter agreement, we are taking a position that there is nothing to intercept and that we are agreeing to put the intercept clause in as in the future there could be appropriations by Legislature for the IESO at which point, it would become necessary in the future which would be a prudent thing to have.

I was getting Ron in the loop as potentially ready to manage the process with OPG.

Let me know pls. if I am off base on any of the above.

John

From: Lisa Stein
Sent: Tuesday, September 26, 2017 11:34 AM
To: John Kim <John.Kim@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

On p. 3, item #6 under "Conditions Precedent", the OFA Lending Policy provides that the OFA must ensure that it has an "appropriate" intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for 'carve-outs' in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 11:24 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]
Sent: Tuesday, September 26, 2017 11:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:37 AM

To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim

Sent: Tuesday, September 26, 2017 10:16 AM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:13 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:05 AM

To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Tuesday, September 26, 2017 10:04 AM

To: John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Lisa Stein](#)
To: [John Kim](#); [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 11:33:54 AM

On p. 3, item #6 under “Conditions Precedent”, the OFA Lending Policy provides that the OFA must ensure that it has an “appropriate” intercept in place. While the intercept wording in the Policy itself does not provide flexibility (as noted by Toby), perhaps this provision allows for ‘carve-outs’ in situations where the operation of the intercept would not be appropriate (such as those outlined by John below)?

Lisa

From: John Kim
Sent: Tuesday, September 26, 2017 11:24 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi,

I’m happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA’s Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]
Sent: Tuesday, September 26, 2017 11:01 AM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: September 26, 2017 10:44 AM

To: Neville, Sarah (OFA); Stein, Lisa (OFA)

Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)

Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:37 AM

To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to

definitions of “permitted liens” and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca/ieso.ca/jna01.safelinks.protection.outlook.com

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#); [Lisa Stein](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 11:23:52 AM

Hi,

I'm happy to organize a call among us, if there is a need for it.

In an earlier note when we were seeking the Intercept Exemption Directive, we had the following bullets as part of the rationale section:

- While the IESO settlements system for the electricity sector may facilitate the flow of appropriations of the Ministry of Energy for energy-related programs such as the Ontario Rebate for Electricity Consumers (OREC), the Rural or Remote Rate Protection Program (RRRP), the Ontario Electricity Support Program (OESP) etc., these payments are for the benefit of various electricity consumers.
- Intercepting these program specific payments, which are appropriated by the Legislature for the Ministry of Energy, under which the IESO may only be providing a conduit to local distribution companies under the IESO settlement system to provide benefits to ratepayers, in order to recover loan payments would not be in alignment with the wording or intent of the OFA's Lending Policy.

Would these not relate to the carve-outs that Toby is referring to? Let me know pls. if I am mis-interpreting things.

John

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: Tuesday, September 26, 2017 11:01 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch

Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to definitions of "permitted liens" and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim

Sent: Tuesday, September 26, 2017 10:16 AM

To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:13 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>

Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville

Sent: Tuesday, September 26, 2017 10:05 AM

To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>

Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 23, 2017 8:42 AM

To: John Kim <John.Kim@ofina.on.ca>

Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations

Independent Electricity System Operator (IESO) | T: 905-403-6944

Station A, Box 4474, Toronto, ON, M5W 4E5

www.ieso.ca[ieso.ca][na01.safelinks.protection.outlook.com]

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM

To: Anthony Martinello

Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September

works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim

Director, Electricity Finance Branch

Ontario Financing Authority

e-mail: john.kim@ofina.on.ca

Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Whitfield, Tobias P. \(MOF\)](#)
To: [John Kim](#); [Sarah Neville](#); [Lisa Stein](#)
Cc: [Sarah Harris](#); [Anna Strathy](#)
Subject: RE: IESO credit facility
Date: Tuesday, September 26, 2017 11:01:00 AM

Although I am sympathetic to Anthony's concerns, I am not sure that the OFA lending policy leaves room for carve-outs for what is subject to the intercept.

Sarah and Lisa, do you see scope for doing so?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 26, 2017 10:44 AM
To: Neville, Sarah (OFA); Stein, Lisa (OFA)
Cc: Harris, Sarah (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

Anthony had very cursory comments along two points – some concern expressed by Stikeman and Elliott about priority over payments and that they have some MOECC dealings related to Cap and Trade(?). I mentioned to him that the intent is not to cover anything other than appropriation for IESO's own operational funding and that happy to receive edits to cover such concerns.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:37 AM
To: John Kim <John.Kim@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: IESO credit facility

Hi –

I just spoke with Toby (I've copied him as an FYI) and he flagged that he doesn't know why IESO would need to share this with OPG in the first instance. The only issue/reason we could identify was that it may have something to do with the purchase by OPG of the "asset" (I'm using quotation marks because I don't know anything about this transaction or its structure other than how it is referred) from IESO and making sure that the "asset" is free of encumbrances. IESO may have reps or warranties in its dealings with OPG to this effect, and, I am guessing, but this may have been part of the rationale with respect to concerns that IESO had in earlier versions of the drafting in regard to

definitions of “permitted liens” and ranking of debt. Our advice is to reach out to IESO and try to ascertain the reason for the request (John, as Anthony called you, perhaps you could call him back with this request?)

I understand that we have been treating this loan as confidential, and OFA can waive confidentiality and allow disclosure to OPG (if this route is agree to I would recommend that disclosure be made by IESO on a confidential basis) but the risk/caution is that adding more layers outside of the immediate parties to the intercept (which now includes MOE), will add further delay and complexity in what is essentially an administrative issue and as noted we are not plugged into the broader discussions going on between the other parties with respect to other components of the FHP process.

Sarah

From: John Kim
Sent: Tuesday, September 26, 2017 10:16 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi Sarah,

Sounds good to me. Anthony gave me a call to give me the heads-up before the email.

I did also mention to him that we would be open to suggested edits to the draft to reflect any comments they may have.

John

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:13 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

Hi John,

Off the top of my head I don't see any legal issues from the OFA perspective, but I defer to Lisa because she is closer to the documentation than I am so will ask her to weigh in.

We should also consider giving Toby a heads up because I think MOF Legal's been more involved in the OPG side of things, I don't know where things stand on the other various moving parts that are not directly within the mandate of the OFA. I will give him a quick call.

Sarah

From: Sarah Neville
Sent: Tuesday, September 26, 2017 10:05 AM
To: Lisa Stein (Lisa.Stein@ofina.on.ca) <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Hi Lisa – could you let us know if you see any concerns with this request?

Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Tuesday, September 26, 2017 10:04 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Subject: RE: IESO credit facility

John,

Thanks for this.

We have reviewed and before we comment back, we would like your ok to discuss/share this doc with OPG and their lawyers.

Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 21, 2017 4:07 PM
To: Anthony Martinello
Cc: Sarah Harris; Victor Buza; Sarah Neville
Subject: RE: IESO credit facility

Hi Anthony,

Pls. see attached draft letter agreement for IESO's consideration. We have shared with Energy Legal the draft as well to get their input/comments.

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 20, 2017 9:58 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Harris <Sarah.Harris@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO credit facility

Sure, before 11am today is preferred. Can you send call-in details. Regards.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 20, 2017 9:44 AM
To: Anthony Martinello
Cc: Sarah Harris
Subject: RE: IESO credit facility

Hi Anthony,

Do you have time for a quick call this morning?

Thanks,

John

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 23, 2017 8:42 AM
To: John Kim <John.Kim@ofina.on.ca>
Subject: RE: IESO credit facility

Moody's (Gavin MacFarlane) has verbally raised their concern to me that the new \$2B facility should be in place this month – main concern is that the IESO may/is rapidly burning through the \$975M capacity at about \$200M-\$250M/month. Also, the first sale to Financing Entity is not expected until October(ish).

I am currently at about \$405M utilized.

Also, both the IESO Board of Directors and Moody's were expecting these new facilities to be in place this month – and so, any delay would need to be explained.

Appreciate your efforts to co-ordinate a timely approval.

Call me to discuss if needed.

Regards.

Anthony Martinello Director, Treasury & Pension Operations
Independent Electricity System Operator (IESO) | T: 905-403-6944
Station A, Box 4474, Toronto, ON, M5W 4E5
www.ieso.ca/ieso.ca/jna01.safelinks.protection.outlook.com

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: August 22, 2017 5:22 PM
To: Anthony Martinello
Subject: IESO credit facility

Hi Anthony,

I am currently working on your request for the two facilities with the OFA.

I understand your main concern is your interactions with the ratings agencies, Moody's specifically. Is there a particular timeline that you have to meet? My estimation is that the required approvals can be obtained in the early part of next week or the week after. I know the week after is spilling into September.

I am happy to keep pushing for early next week but let me know if the first week of September works. I am confirming as some extraordinary steps are involved.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [John Kim](#)
To: [Tobias P. Whitfield \(MOF\)](#); [Sarah Neville](#); [Lisa Stein](#); [William Tan](#); [Sarah Harris](#)
Cc: [Anna Strathy](#); [Francisco Chinchon](#)
Subject: RE: IESO credit facility
Date: Friday, October 20, 2017 1:56:14 PM

Thanks everyone for joining the chat on short notice and also to Francisco for helping out. And sorry, didn't mean to leave out Sarah H. in my email this morning.

One of the takeaways from the meeting for me was that we need to let IESO know within reasonable timeframe that amending the existing facilities at any point would require appropriate approvals, likely involving a Directive and that we cannot actively or passively acquiesce [not sure if this is the appropriate word] by not responding. That it would require appropriate approvals when IESO has reasonably concluded its discussion on the matter. I just sent that in an email response following a phone call and also wanted to flag that IESO is expecting the next draft on Wednesday so I think we are looking at that as when we will have a sense of where the two entities stand.

All said, we are working on the Directive option in parallel.

John

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]
Sent: Friday, October 20, 2017 10:15 AM
To: Sarah Neville <Sarah.Neville@ofina.on.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: IESO credit facility

I agree that Sarah's question is an important one. What is the purpose of the security interest? I didn't know that the Trust was going to be a creditor of IESO?

Is there some background on that issue?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Sarah Neville [<mailto:Sarah.Neville@ofina.on.ca>]
Sent: October 20, 2017 10:13 AM
To: Stein, Lisa (OFA); Kim, John (OFA); Tan, William (OFA)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

I agree with Lisa re intercept.

As a sidebar, not an OFA issue and way beyond my expertise, but is there any concern/discussion that the Trust, if given a first priority over ALL the asset of the IESO could potentially enforce a security interest and liquidate a significant entity responsible for overseeing the supply of electricity into Ontario? Is anyone weighing in on this question -IESO/MOE?

Sarah

From: Lisa Stein

Sent: Friday, October 20, 2017 10:02 AM

To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

Subject: RE: IESO credit facility

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.

I've copied Toby from MOF Legal as a heads up.

Lisa

From: John Kim

Sent: Friday, October 20, 2017 8:08 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

"DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu."

Thanks,

John

From: John Kim
Sent: Friday, October 06, 2017 10:16 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: [John Kim](#)
To: [Lisa Stein](#)
Cc: [Sarah Neville](#); [Sarah Harris](#); [William Tan](#); [Gavin He](#); [Anna Strathy](#)
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx
Date: Tuesday, October 24, 2017 4:05:09 PM
Attachments: [Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v4.docx](#)

Hi,

I have a push back from Ron on this and he does have a point. I put his edits back. It has to do with OFA having no ability to confirm the fact unless we want to do that separately.

I will share with IESO and Energy the version as the latest.

Copying Anna on this email as it should be reviewed by Gadi as well.

Thanks,

John

From: Lisa Stein
Sent: Tuesday, October 24, 2017 2:31 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Edits as requested. I've removed Ron's edits as well.

Lisa

Lisa N. Stein
Legal Counsel
Ontario Financing Authority
416-325-2320

This message, including any attachments, is intended only for the use of the individual(s) to which it is addressed and contains information that is privileged/confidential. Any other distribution, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply e-mail and permanently delete this message, including any attachments, without reading it or making a copy. Thank you.

I am writing in relation to the Independent Electricity System Operator's (IESO) request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*.

Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. ~~In general, an~~ The intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement.

The ~~OFA, IESO and the Ministry of Energy ("ENERGY")~~ confirm and the OFA acknowledges ~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] by ENERGY and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment by ENERGY to the IESO in the future.

Commented [ESP1]: Defer to Corporate?

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement"), on an unsecured basis, the OFA requires ~~the Ministry of Energy ("ENERGY")~~ and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing [\$975 million] credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and ENERGY agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a "Loan Agreement"; together, the "Loan Agreements"):
 - o Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and ENERGY agree that, in the event that the Legislature appropriates any funds for payment by ENERGY to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the "intercept provision"). Terms relating to the intercept provision shall also be separately included in the Loan Agreements.
 - o ~~If Under~~ the intercept provision is exercised, which shall be included in the Loan Agreements, the IESO ~~also~~ agrees that any notice from the OFA to the Minister of Finance in relation to its failure to make a payment that is due under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

- o Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with ENERGY and seek ENERGY's support in getting the IESO to pay the amounts owing to OFA within a reasonable cure period.
- o Upon receipt of notice from the OFA that the IESO has failed to make one or more payments owing to it in accordance with the provisions of a Loan Agreement, ENERGY will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO by ENERGY, including the intended purpose and expected timing of such payments to be made by ENERGY. Upon request, ENERGY will provide similar information to the Minister of Finance.
- o ENERGY acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment by ENERGY to the IESO, ENERGY will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance's direction.
- o For further certainty, the OFA and ENERGY acknowledge and agree that the intercept provision as provided for herein, and this letter agreement generally, shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than ENERGY or through any other agencies, bodies or other means.

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

I am writing in relation to the Independent Electricity System Operator's (IESO) request to the Ontario Financing Authority (OFA) for a new revolving credit facility in an amount of up to \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*.

Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. ~~In general, an~~ The intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement.

The ~~OFA, IESO and the Ministry of Energy ("ENERGY")~~ confirm and the OFA acknowledges ~~s and confirm~~ that at this time there are no amounts appropriated by the Legislature for payment to the IESO [Energy to confirm] by ENERGY and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment by ENERGY to the IESO in the future.

Commented [ESP1]: Defer to Corporate?

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement"), on an unsecured basis, the OFA requires ~~the Ministry of Energy ("ENERGY")~~ and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing [\$975 million] credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and ENERGY agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a "Loan Agreement"; together, the "Loan Agreements"):
 - o Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and ENERGY agree that, in the event that the Legislature appropriates any funds for payment by ENERGY to the IESO for any purpose ("Appropriated Funds"), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the "intercept provision"). Terms relating to the intercept provision shall also be separately included in the Loan Agreements.
 - o ~~If Under~~ the intercept provision is exercised, ~~which shall be included in the Loan Agreements,~~ the IESO ~~also~~ agrees that any notice from the OFA to the Minister of Finance in relation to its failure to make a payment that is due under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

- o Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with ENERGY and seek ENERGY's support in getting the IESO to pay the amounts owing to OFA within a reasonable cure period.
- o Upon receipt of notice from the OFA that the IESO has failed to make one or more payments owing to it in accordance with the provisions of a Loan Agreement, ENERGY will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO by ENERGY, including the intended purpose and expected timing of such payments to be made by ENERGY. Upon request, ENERGY will provide similar information to the Minister of Finance.
- o ENERGY acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment by ENERGY to the IESO, ENERGY will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance's direction.
- o For further certainty, the OFA and ENERGY acknowledge and agree that the intercept provision as provided for herein, and this letter agreement generally, shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than ENERGY ~~or through any other agencies, bodies or other means.~~

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#); [Ken Kandeepan](#)
Subject: RE: OFA : IESO
Date: Thursday, April 13, 2017 11:06:24 AM
Attachments: [image001.png](#)

Hi Gadi,

All very interesting.

On one point, how would a thread directly from individual ratepayers to the lenders to the GA smoothing work? That would seem particularly challenging.

Ron

From: Gadi Mayman
Sent: April-13-17 10:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OFA : IESO

Thanks, this came up at this morning's rate mitigation meeting, and the IESO people were happy to hear that we're on this, as they're a little nervous about how they're going to finance the regulatory asset until OPG is set up to take it on and pay for it.

I'm adding Ken to close the loop on the exchange that we had last night about the OPG letter - I asked Serge to add in the OFA, and he instructed Steen to do so, and, yes, the letter will be posted, at some point, on OPG's website.

In the half hour that I was able to attend the meeting, the discussion was around the legislation. The biggest point of contention was about OPG's need to have a direct recourse to ratepayers, and the legislative need for a thread directly from individual ratepayers to the lenders to the GA smoothing. The OEB doesn't like that concept at all. The other point that is of interest to us is that they are not looking at putting the guarantee mechanism into the legislation - although there will be some description in the legislation about what, I think they called indemnification will be needed, and then they will leave the guarantee to a commercial one. No surprise that OPG's dealer advisors are saying they need a full provincial guarantee, which OPG is pushing back on, and saying that the guarantee can only be if a future government changes the value of the regulatory asset (this is where the indemnification language in the legislation is necessary). Cindy, of course, as well as me for different reasons, is fussed about the nature of that guarantee, so we asked if they could sort that out with the dealers before the legislation is tabled. We don't want to end up with the dealers

holding OPG hostage six months from now - not that they'd ever do that, would they Mike 😊
?

I'm sure Scott will send out his fuller synopsis later today, and that'll also cover what happened in the last hour, after I'd left.

Gadi

From: Ronald Kwan
Sent: Thursday, April 13, 2017 8:37:54 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He
Subject: Re: OFA : IESO

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged,

confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



From: [Ken Kandeepan](#)
To: [Ronald Kwan](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#); [Gadi Mayman](#)
Subject: RE: OFA : IESO
Date: Thursday, April 13, 2017 10:53:33 AM
Attachments: [image001.png](#)

Thanks, Ron, can you pls include me in the IESO credit needs meeting, since Cindy and I are having a number of discussions, with and without OPG, on developing a comprehensive accounting model for the GA smoothing, I need to be aware of all potential impacts to the model.

Thanks

Ken K

From: Gadi Mayman
Sent: Thursday, April 13, 2017 10:47 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OFA : IESO

Thanks, this came up at this morning's rate mitigation meeting, and the IESO people were happy to hear that we're on this, as they're a little nervous about how they're going to finance the regulatory asset until OPG is set up to take it on and pay for it.

I'm adding Ken to close the loop on the exchange that we had last night about the OPG letter - I asked Serge to add in the OFA, and he instructed Steen to do so, and, yes, the letter will be posted, at some point, on OPG's website.

In the half hour that I was able to attend the meeting, the discussion was around the legislation. The biggest point of contention was about OPG's need to have a direct recourse to ratepayers, and the legislative need for a thread directly from individual ratepayers to the lenders to the GA smoothing. The OEB doesn't like that concept at all. The other point that is of interest to us is that they are not looking at putting the guarantee mechanism into the legislation - although there will be some description in the legislation about what, I think they called indemnification will be needed, and then they will leave the guarantee to a commercial one. No surprise that OPG's dealer advisors are saying they need a full provincial guarantee, which OPG is pushing back on, and saying that the guarantee can only be if a future government changes the value of the regulatory asset (this is where the indemnification language in the legislation is necessary). Cindy, of course, as well as me for different reasons, is fussed about the nature of that guarantee, so we asked if they could sort that out with the dealers before the legislation is tabled. We don't want to end up with the dealers holding OPG hostage six months from now - not that they'd ever do that, would they Mike 😊

?

I'm sure Scott will send out his fuller synopsis later today, and that'll also cover what happened in the last hour, after I'd left.

Gadi

From: Ronald Kwan
Sent: Thursday, April 13, 2017 8:37:54 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He
Subject: Re: OFA : IESO

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail

message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



From: [Ronald Kwan](#)
To: [Ken Kandeepan](#)
Cc: [Gadi Mayman](#); [Mike Manning](#); [Anna Strathy](#); [Gavin He](#)
Subject: RE: OFA : IESO
Date: Thursday, April 13, 2017 11:07:15 AM
Attachments: [image001.png](#)

Hi Ken,

Sure. IESO is setting up a call for Tuesday afternoon, likely 2:30.

Ron

From: Ken Kandeepan
Sent: April-13-17 10:54
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: OFA : IESO

Thanks, Ron, can you pls include me in the IESO credit needs meeting, since Cindy and I are having a number of discussions, with and without OPG, on developing a comprehensive accounting model for the GA smoothing, I need to be aware of all potential impacts to the model.

Thanks

Ken K

From: Gadi Mayman
Sent: Thursday, April 13, 2017 10:47 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OFA : IESO

Thanks, this came up at this morning's rate mitigation meeting, and the IESO people were happy to hear that we're on this, as they're a little nervous about how they're going to finance the regulatory asset until OPG is set up to take it on and pay for it.

I'm adding Ken to close the loop on the exchange that we had last night about the OPG letter - I asked Serge to add in the OFA, and he instructed Steen to do so, and, yes, the letter will be posted, at some point, on OPG's website.

In the half hour that I was able to attend the meeting, the discussion was around the legislation. The biggest point of contention was about OPG's need to have a direct recourse to

ratepayers, and the legislative need for a thread directly from individual ratepayers to the lenders to the GA smoothing. The OEB doesn't like that concept at all. The other point that is of interest to us is that they are not looking at putting the guarantee mechanism into the legislation - although there will be some description in the legislation about what, I think they called indemnification will be needed, and then they will leave the guarantee to a commercial one. No surprise that OPG's dealer advisors are saying they need a full provincial guarantee, which OPG is pushing back on, and saying that the guarantee can only be if a future government changes the value of the regulatory asset (this is where the indemnification language in the legislation is necessary). Cindy, of course, as well as me for different reasons, is fussed about the nature of that guarantee, so we asked if they could sort that out with the dealers before the legislation is tabled. We don't want to end up with the dealers holding OPG hostage six months from now - not that they'd ever do that, would they Mike 😊
?

I'm sure Scott will send out his fuller synopsis later today, and that'll also cover what happened in the last hour, after I'd left.

Gadi

From: Ronald Kwan
Sent: Thursday, April 13, 2017 8:37:54 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He
Subject: Re: OFA : IESO

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



From: [Ronald Kwan](#)
To: [Anna Strathy](#)
Subject: RE: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:34:59 PM

Thanks Anna.

I understand that both IESO and Energy have been inquiring about the status of the intercept and getting the credit facility in place. And I understand that the draft of the letter has been circulated and is otherwise ready to go.

Ron

From: Anna Strathy
Sent: October-25-17 18:32
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: Re: OFA-IESO Credit Agreements

Thanks Ron. I'm following up with Gadi.

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 25, 2017, at 4:32 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Anna Strathy](#); [Gavin He](#); [Mike Manning](#); [Ken Kandeepan](#)
Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017
Date: Monday, May 01, 2017 6:48:10 PM
Attachments: [GA - IESO Role and Financing v4 - extract v10.pptx](#)
[GA - IESO Role and Financing v4 - extract v9 Markup3.pptx](#)

Hi Gadi,

We made a few tweaks to the slides.

Energy's PW.

Ron

From: Ronald Kwan
Sent: April-28-17 15:19
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017

Hi Gadi,

Would you have an idea when Energy will be circulating the draft TB Report Back?

I was talking to Steen on Wednesday on the IESO request for an expanded credit facility from the OFA, and he asked for some input.

Some potential input is attached, modifying the flow chart that Energy had in its March CabSub, to show a potential role for the OFA for financing the IESO (at least on an interim basis).

Steen also asked if we'd be looking for an approval. I'm not sure that is needed (assuming that IESO eventually can still sell the asset to OPG's SPV eventually, as planned), but perhaps a "Note" in the Minute would be helpful, along the lines of "Note that [the Minister of Finance will direct] the OFA [to/will] provide a credit facility to the IESO to facilitate ..."

Energy's PW.

Ron

From: Gadi Mayman
Sent: April-25-17 23:28
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>

Subject: Fw: Rate Mitigation Implementation Meeting - April 25, 2017

From: Katona, Keley (ENERGY) <Keley.Katona@ontario.ca>

Sent: Tuesday, April 25, 2017 4:30 PM

To: Steen Hume (CAB); Kaili Sermat-Harding (ENERGY); Michael Reid (ENERGY); Carolyn Calwell (MCSS); Scott Nelms (ENERGY); 'jeffrey.lyash@opg.com' (jeffrey.lyash@opg.com); HARTWICK Ken - FINANCE (ken.hartwick@opg.com); Rosemaire Leclair; Mary Anne Aldred

(maryanne.aldred@ontarioenergyboard.ca); Campbell, Bruce (bruce.campbell@ieso.ca); Kim Marshall (Kim.Marshall@ieso.ca); Scott Thompson (CAB); Helen Angus (MOHLTC); Steven Davidson (MTCS); 'Martine Band'; 'CROZZOLI Carlo -CBUSDEV&STRT'; Gadi Mayman; LEE John -TREASURY

Cc: Serge Imbrogno (ENERGY); Andrew Teliszewsky (ENERGY); Matt Whittington (ENERGY); Baker, Carys (ENERGY); Kyle MacIntyre (MOF); David McLean (MOF); Robert Foster (MOF);

jordan.penic@ieso.ca; 'sarah.branco@ontarioenergyboard.ca'; Turnevicius, Lorraine;

catriona.king@opg.com; Francesca Bungaro-Yemec (ENERGY); Martin Schlaepfer (MOF)

Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017

Please find attached action items from today's meeting.

From: Katona, Keley (ENERGY)

Sent: April-24-17 5:02 PM

To: Hume, Steen (ENERGY); Sermat-Harding, Kaili (ENERGY); Reid, Michael (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Nelms, Scott (MOF); 'jeffrey.lyash@opg.com' (jeffrey.lyash@opg.com); 'HARTWICK Ken -FINANCE' (ken.hartwick@opg.com); 'Rosemaire Leclair'; 'Mary Anne Aldred' (maryanne.aldred@ontarioenergyboard.ca); 'Campbell, Bruce' (bruce.campbell@ieso.ca); 'Kim Marshall' (Kim.Marshall@ieso.ca); Thompson, Scott (MOF); Angus, Helen (TBS); Davidson, Steven (CAB); 'Martine Band'; 'CROZZOLI Carlo -CBUSDEV&STRT'; Mayman, Gadi (OFA); 'LEE John -TREASURY'

Cc: Imbrogno, Serge (ENERGY); Teliszewsky, Andrew (ENERGY); Whittington, Matt (ENERGY); Baker, Carys (ENERGY); MacIntyre, Kyle (TBS); McLean, David (MOF); Foster, Robert (CAB); 'jordan.penic@ieso.ca'; 'sarah.branco@ontarioenergyboard.ca'; 'Turnevicius, Lorraine'; 'catriona.king@opg.com'; Bungaro-Yemec, Francesca (ENERGY); Schlaepfer, Martin (ENERGY)

Subject: Rate Mitigation Implementation Meeting - April 25, 2017

Good afternoon,

Please find attached the material for discussion tomorrow morning.

Thanks,

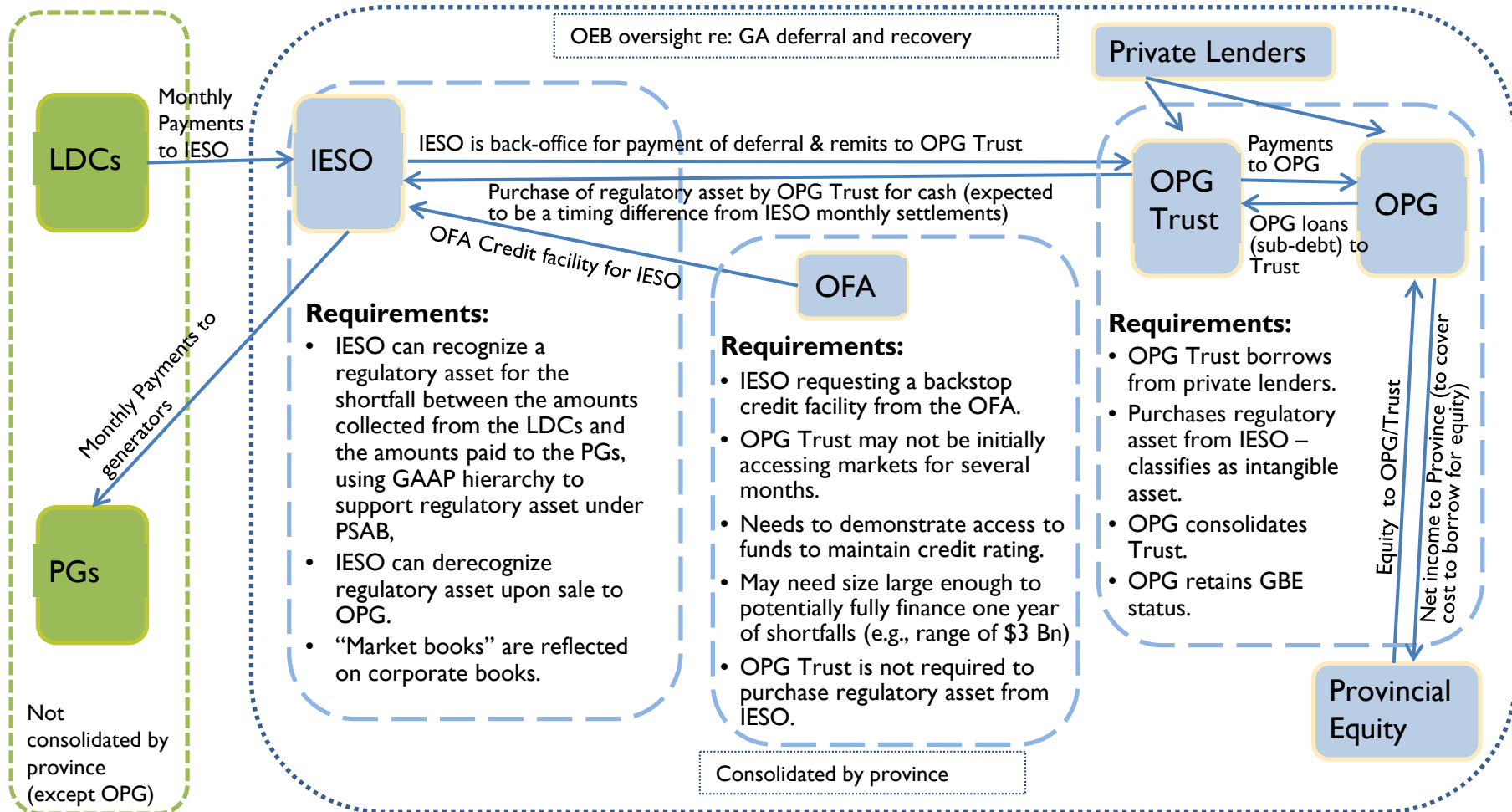
Keley

GA Financing Plan: Role of IESO

Corporate and Electricity Finance Division
May 1, 2017

GA Smoothing – Proposed Structure

- The following diagram provides an overview of the proposed GA smoothing structure, as well as interactions between sector entities and elements required to meet accounting objectives.



IESO Financing Requirements

- IESO will need to ensure that it continues to have the funds available to provide payments to generators on a monthly basis as part of the IESO settlements process, while recoveries from LDCs for Regulated Price Plan (RPP) / Fair Hydro Plan eligible customers will be lower.
- IESO has an existing credit facility from the OFA; however, a new or expanded facility is being requested.
- IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period.
 - OPG Trust is not expected to access public capital markets for several months after the start of the FHP, and may be purchasing the asset with a lag vs monthly settlements. Also, OPG Trust is not required to purchase the regulatory asset.
 - IESO will need a credit facility for interim financing.
 - IESO may require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.
- Based on Ministry of Energy's GA deferral plan, it is estimated that approximately \$2.5-3.0 billion need to be deferred per year for over first 10 years, equal to approximately \$200-250 million per month, on average.¹
 - The size of the credit facility required to backstop IESO could be \$2.5 to \$3.0 billion. [TBC]
- The monthly and annual amount being deferred and the resulting monthly amounts can be substantially different than forecast based on various factors, such as seasonality or electricity usage, as well as potential changes to electricity costs from OEB rate decisions, with IESO estimating deferral amounts as high as \$400 million per month.
- Other factors that may increase IESO's financing requirements:
 - IESO will also incur financing charges that will need to be refinanced.
 - The financing and administration costs that OPG Trust incurs will need to be paid.
- There is an accounting risk on how OFA financing of the IESO requirements would be treated.
 - Even if IESO is allowed to recognize the Regulatory Asset, there is a risk as to whether this recognition will be permitted under the accounting standards (PSAS) upon consolidation with the Province.

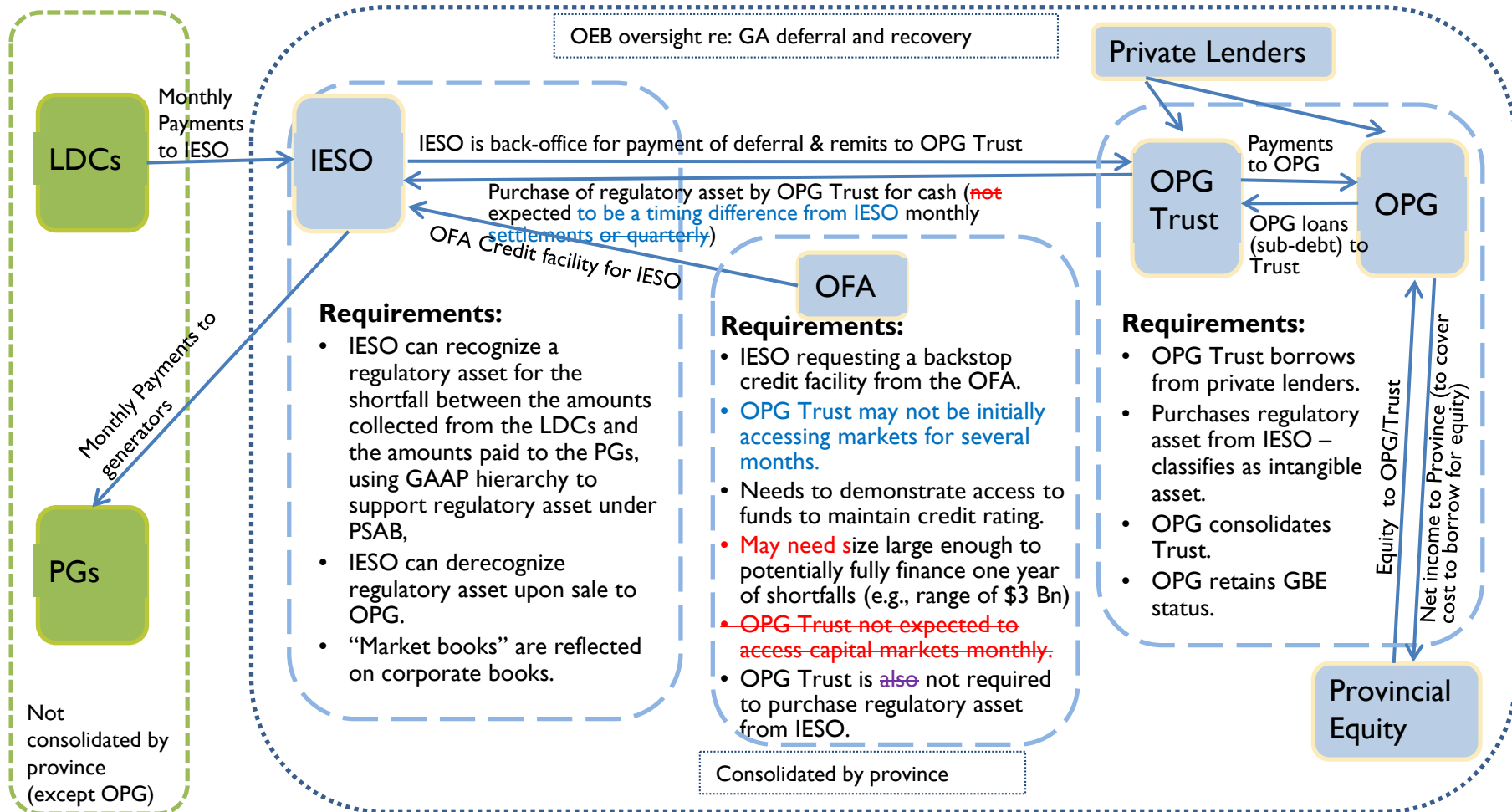
¹ Based on Ministry of Energy's annual GA deferral amounts, assuming the monthly deferral is equally-weighted.

GA Financing Plan: Role of IESO

Corporate and Electricity Finance Division
April 28, 2017

GA Smoothing – Proposed Structure

- The following diagram provides an overview of the proposed GA smoothing structure, as well as interactions between sector entities and elements required to meet accounting objectives.



Note: Proposed structure is subject to legal and accounting confirmation, absent that confirmation, there would be a fiscal impact to the province.

IESO Financing Requirements

- IESO will need to ensure that it continues to have the funds available to provide payments to generators on a monthly basis as part of the IESO settlements process, while recoveries from LDCs for Regulated Price Plan (RPP) / Fair Hydro Plan eligible customers will be lower.
- IESO has an existing credit facility from the OFA; however, a new or expanded facility is being requested.
- IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period.
 - OPG Trust is not expected to [access public capital markets for several months after the start of the FHP, and may be purchasing the asset with a lag vs monthly settlements](#). Also, OPG Trust is not ~~nor is it~~ required to purchase the regulatory asset.
 - IESO will need a credit facility for interim financing.
 - IESO may require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.
- Based on Ministry of Energy's GA deferral plan, it is estimated that approximately \$2.5-3.0 billion need to be deferred per year for over first 10 years, equal to approximately \$200-250 million per month, on average.¹
 - The [size of the](#) credit facility required to backstop IESO could be \$2.5 to \$3.0 billion [per year](#). [TBC]
- [The monthly and annual amount being deferred and the resulting monthly amounts can be substantially different than forecast](#) based on various factors, such as seasonality or electricity usage, as well as potential changes to electricity costs from OEB rate decisions, with IESO estimating deferral amounts as high as \$400 million per month.
- Other factors that may increase IESO's financing requirements:
 - IESO will also incur financing charges that will need to be refinanced.
 - The financing and administration costs that OPG Trust incurs will need to be paid.
- There is an accounting risk on how OFA financing of the IESO requirements would be treated.
 - Even if IESO is allowed to recognized the Regulatory Asset, there is a risk as to whether this recognition will be [permitted under the accounting standards \(PSAS\) upon consolidation with the Province](#).

¹ Based on Ministry of Energy's annual GA deferral amounts, assuming the monthly deferral is equally-weighted.

From: [Ronald Kwan](#)
To: [Gadi Mayman](#); [Anna Strathy](#)
Subject: Re: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Thursday, October 26, 2017 4:29:26 PM

Hi Gadi, Anna,

I was just noticing that Toby's email included the draft IESO Security Agreement.

We'll have to take a closer look, but I noticed this wording in 3.1(a) on **Covenants**:

The Grantor (IESO) hereby covenants and agrees with the Secured Party (Financing entity) as follows:

Not to pay any other obligations of the Grantor at any time when its Statutory Obligation to pay Carrying Costs is in arrears, except to the extent that such other obligations are satisfied from amounts payable to the Grantor pursuant to Appropriations.

(Where "Appropriations" is defined as under the FAA.)

If there is a carve out for appropriations in this instance, why not otherwise (though, in theory, if the intercept were ever invoked, IESO wouldn't be getting the appropriations).

Ron

From: Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>

Sent: October 26, 2017 1:55 PM

To: Anna Strathy; Gadi Mayman; Ken Kandeean; Malle Hanslep (MOF); Veinot, Cindy (TBS); Mike Manning; Ronald Kwan; Scott Nelms (ENERGY); James Devine; Carlos Yep; Cengarle, John (MOF); Keley Katona (ENERGY); Mark Donaldson (MOF); Usman Zahid; Anis Hirani; John Kim; Hresa Gavaris; John Psinas

Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement

FYI, Please see attached additional and revised documentation from OPG, including:

- 1 – Master Transfer and Servicing Agreement;
- 2 – IESO Security Agreement;
- 3 – Master Trust Indenture; and
- 4 – ISDA Schedule

We are still waiting on the Supplemental Indenture for the term debt.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: October 25, 2017 12:12 PM

To: Mansoori, Nina; Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com

Cc: Feldman, Michael; Olusoga, Yinka; Saulnier, Brett; Ramchandani, Rima; WONG Leslie -LAWDIV; 'LEE John -TREASURY'; RYFA Ken -TREASURY

Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Malle and team, attached is a revised draft of the MTSA (clean and blacklined to the prior draft circulated to Steve), together with an initial draft of the IESO security agreement (as a reminder, in order to achieve a AAA rating in light of the moratorium period, it has been proposed that IESO enter into this security agreement in favour of the financing entity as security for the performance of its regulatory obligation to pay carrying costs during the moratorium).

FYI, these documents are currently under review by the IESO and Stikeman.

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

 www.torys.com

From: Mansoori, Nina

Sent: October-24-17 5:21 PM

To: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; STEPHEN.ASHBOURNE@blakes.com

Cc: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Mansoori, Nina <nmansoori@torys.com>

Subject: RE: Fair Hydro -- Form of ISDA Schedule

All,

We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.

Best Regards,
Nina

Nina Mansoori
P. 416.865.7332

This email and any attachments are for the sole use of the intended recipients and may be privileged or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

Le présent courriel et les documents qui y sont joints sont exclusivement réservés à l'utilisation des destinataires concernés et peuvent être de nature privilégiée ou confidentielle. Toute distribution, impression ou autre utilisation est interdite aux autres personnes. Si vous ne faites pas partie des destinataires concernés, veuillez en informer immédiatement l'expéditeur, ainsi que supprimer ce courriel et les documents joints de manière permanente.

From: [Gadi Mayman](#)
To: [Anna Strathy](#)
Cc: [Ken Kandeepan](#); [Ronald Kwan](#)
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:09:14 AM

Thanks, Anna. Please let Dave know what's happening.

On Sep 18, 2017, at 11:01 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue

of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan
Sent: Friday, September 15, 2017 1:57 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility

documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Ronald Kwan](#)
To: [Ken Kandeepan](#); [Anna Strathy](#)
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:53:48 AM

Hi,

Just saw your response. I sent an email too.

Ron

From: Ken Kandeepan
Sent: September 18, 2017 10:47 AM
To: Anna Strathy
Cc: Ronald Kwan
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna

The intercept requirement arises from: the OFA Lending Policy which (p. 4 "Security" section) stipulates the OFA must include an intercept provision, unless the OFA either receives an exemption from the OFA Board OR receives direction from the Minister, Cabinet or Treasury Board.

The intercept provision provides that in the event of non-payment by IESO to the OFA under the Credit Facility, the Minister may take funds appropriated by the Legislature for IESO, and may instead use the funds to repay the OFA (in the amount that IESO has defaulted under the facility).

From a practical basis this requirement is irrelevant since the IESO as the market operator receives no funding from the Province, hence nothing is appropriated by the Legislature for the Operator and there is nothing to intercept.

As such, not obtaining the Minister's exemption should have no impact on IESO's accounting. On the other hand by not doing so a requirement in the OFA's Lending Policy is being ignored.

Ron you may have something to add.

Thanks

Ken k

From: Anna Strathy
Sent: Monday, September 18, 2017 10:40 AM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Subject: FW: IESO Credit Facility and Intercept Provision Exemption

I just clarified with Gadi – he’s hoping for a response to the question below before 1pm today when he’ll see the Deputy next.

From: Anna Strathy

Sent: Monday, September 18, 2017 10:11 AM

To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>

Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister’s exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO’s accounting?

Anna

From: Ronald Kwan

Sent: Friday, September 15, 2017 1:57 PM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister’s exemption from the OFA’s public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister’s directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister’s exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Ronald Kwan](#)
To: [Anna Strathy](#)
Cc: [Gadi Mayman](#); [Ken Kandeean](#)
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 10:53:09 AM

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan

Sent: Friday, September 15, 2017 1:57 PM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Gadi Mayman](#)
To: [Ronald Kwan](#); [Anna Strathy](#); [Ken Kandeepan](#)
Subject: Re: IESO Credit Facility and Intercept Provision Exemption
Date: Monday, September 18, 2017 11:27:59 PM

I like the proposed path in the last paragraph of your email, Ron. Let's see if we can make that work.

Gadi

From: Ronald Kwan
Sent: Monday, September 18, 2017 5:38:02 PM
To: Anna Strathy; Ken Kandeepan
Cc: Gadi Mayman
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

We'll look into this. Note that it would not be just IESO's agreement required.

The OFA lending policy on intercepts also involves the oversight ministry of an agency:

...prior to any loan agreement entered into between the OFA and a public body, such public body and its responsible ministry are to agree that the Minister of Finance is entitled to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts that the public body fails to pay to the OFA on account of indebtedness under its loan agreement with the OFA. In addition, the public body is to agree that any notice from the OFA to the Minister of Finance in relation to its failure to pay under its loan agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.

In that context of going forward and including an intercept provision in the credit facility, Energy would need to provide such agreement (this is from last month's discussions by staff with OFA Legal). Note that we have not discussed this with Energy at this point. There may be some challenges to expeditiously have Energy provide written agreement in this regard, noting that IESO will be wanting the facility in place soon.

As an aside, we had asked TBS staff in August to confirm our understanding that at this point there are no such moneys appropriated by the Legislature for payment to the IESO, but we'd want to confirm that more formally under this option of proceeding.

Perhaps an option could be that Energy might simply confirm that there are no such amounts appropriated (currently, though the question of the future could arise), or come to an internal agreement that since there are no amounts to intercept, that Energy does not need to agree to an intercept -- and see if folks are comfortable moving forward on that basis -- to include an intercept provision now, which would have no practical effect, and move forward in the near term with a general amendment to the OFA lending policy that would provide for no intercept clause in the case

of loans / credit facilities to public bodies that have no appropriated amounts to intercept.

Ron

From: Anna Strathy
Sent: September-18-17 14:40
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Hi Ken, Ron,

I spoke to Gadi and it sounds like the Deputy's preference would be to add the intercept provision to the agreement with IESO (explaining to them that it is required under our Lending Policy, but would not actually apply in this case) and therefore not have to seek an exemption from the Minister nor have to involve the Board in a change to our Lending Policy.

Would IESO be amenable to this?

Anna

From: Anna Strathy
Sent: Monday, September 18, 2017 11:02 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: RE: IESO Credit Facility and Intercept Provision Exemption

Thanks, Ron.

Gadi – in a separate email chain, Ken provided his concurrence: that not obtaining the Minister's exemption should have no impact on IESO's accounting; however it would be inconsistent with a requirement in the OFA's Lending Policy.

Ron/Ken, could you circle back with Legal and make the suggestion of an amendment to the OFA Lending Policy?

Thanks, Anna

From: Ronald Kwan
Sent: Monday, September 18, 2017 10:53 AM
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: Re: IESO Credit Facility and Intercept Provision Exemption

Hi Anna,

The intercept issue is not an IESO accounting issue, but an OFA lending policy interpretation issue.

As such, I would think of the first step is more an internal to the OFA one, on getting approval/direction to move forward to provide a facility to the IESO without the "security" of an intercept clause envisaged in a plain reading of the OFA lending policy. I think if the Chair and CEO are fine with seeing the OFA lending policy as at most a wording issue and not a non-compliance issue -- i.e., that in effect an intercept is only required when there is an amount to intercept -- then we can move forward on providing a credit facility without an intercept on that basis.

We'd need to respond that way to Legal, as it has been Legal's advice on the issue of compliance with the policy that has led to the exemption request and not have to check a non-compliance box in the quarterly compliance checklist.

If we move forward on that basis, the next time the lending policy is amended, the wording could then be clarified that an intercept is required only where applicable. The Board may ask about the "security" issue too, at that time.

If IESO has the credit facility, then it can finance the GA deferrals until OPG's financing entity purchases the regulatory asset, which I would think is the key accounting issue for the IESO. Whether it needs the larger facility right now is more of a timing issue. This monthly settlement, they are likely to take their total draw so far to over \$600 million of the existing \$975 facility, so could draw for another month or so before running out of room.

Ron

On Sep 18, 2017, at 10:10 AM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Ron,

The Deputy spoke to Gadi this morning about the intercept, and he remains uncomfortable seeking the Minister's exemption for something that is ultimately moot.

If we did not seek an exemption, would there be any impact to IESO's accounting?

Anna

From: Ronald Kwan

Sent: Friday, September 15, 2017 1:57 PM

To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: IESO Credit Facility and Intercept Provision Exemption

Hi Gadi,

Just a heads up, in case you had not heard, that the Deputy is, understandably, raising questions on getting a Minister's exemption from the OFA's public bodies lending policy requiring an intercept provision for the IESO facility, since there is no transfer amount to intercept in this case.

You may recall that OFA Legal had identified this issue in the summer, after the Minister's directive was provided on the IESO facility. It was identified as Legal was drawing up the credit facility documents, and they raised the issue on compliance with the lending policy, and in the context of attestations and scrutiny on compliance issues.

While it was raised at the time that an intercept provision would be moot in this case, we moved forward to seek a Minister's exemption from that part of the lending policy, as provided for under the policy.

Just as a reminder, attached are the related materials.

Happy to discuss.

Ron

From: [Gadi Mayman](#)
To: [Ronald Kwan](#)
Cc: [Anna Strathy](#)
Subject: Re: IESO and OFA - FHP Line of Credit Facility Directive
Date: Tuesday, June 27, 2017 3:44:01 PM

Yes. I think it makes logical sense to continue to be consistent with where we've been.

From: Ronald Kwan
Sent: Tuesday, June 27, 2017 3:19 PM
To: Gadi Mayman
Subject: Fw: IESO and OFA - FHP Line of Credit Facility Directive

Hi Gadi,

Are you okay with keeping a 25 bps spread on the new OFA-IESO credit facility, consistent with existing and past OFA credit facilities for the IESO?

Ron

From: Gavin He
Sent: June 27, 2017 2:01 PM
To: Ronald Kwan
Cc: Bruno Amara; Salman Qadir
Subject: IESO and OFA - FHP Line of Credit Facility Directive

Hi Ron,

Please find attached the draft IESO credit facility package for your review and approval. The package has been reviewed by OFA and MOF Legal.

The documents are also saved under below folder:

<\\ofina.on.ca\ofadfs\Users\CEF\Hydro 2017\IESO\Financing\IESO-OFA - FHP Line of Credit\Minister Directive Package>

Regards,
Gavin He

From: [John Kim](#)
To: [Tobias P. Whitfield \(MOF\)](#)
Cc: [Sarah Neville](#); [Lisa Stein](#); [William Tan](#); [Anna Strathy](#)
Subject: Re: IESO credit facility
Date: Friday, October 20, 2017 10:20:42 AM

Let's have a quick meeting. I think something is lost in the email messaging.

Sent from my iPhone

On Oct 20, 2017, at 10:14 AM, Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca> wrote:

I agree that Sarah's question is an important one. What is the purpose of the security interest? I didn't know that the Trust was going to be a creditor of IESO?

Is there some background on that issue?

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

From: Sarah Neville [<mailto:Sarah.Neville@ofina.on.ca>]
Sent: October 20, 2017 10:13 AM
To: Stein, Lisa (OFA); Kim, John (OFA); Tan, William (OFA)
Cc: Strathy, Anna (OFA); Whitfield, Tobias P. (MOF)
Subject: RE: IESO credit facility

I agree with Lisa re intercept.

As a sidebar, not an OFA issue and way beyond my expertise, but is there any concern/discussion that the Trust, if given a first priority over ALL the asset of the IESO could potentially enforce a security interest and liquidate a significant entity responsible for overseeing the supply of electricity into Ontario? Is anyone weighing in on this question -IESO/MOE?

Sarah

From: Lisa Stein
Sent: Friday, October 20, 2017 10:02 AM
To: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>

Subject: RE: IESO credit facility

If the IESO gives the Trust a 1st priority over all IESO assets, it follows that the intercept provisions as drafted in the proposed credit facility agreement will not work. This further strengthens the case for a directive.

I've copied Toby from MOF Legal as a heads up.

Lisa

From: John Kim

Sent: Friday, October 20, 2017 8:08 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>;

William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Hi,

Pls. take a look at this once again and let me know if you have any comments. Thus far, IESO has not provided any edits but seem to be indicating that they are getting close to being prepared to sign.

IESO has indicated the following and I will ask you to give it some thought:

“DRAFT - The Trust is looking for the IESO to give a 1st priority/security over all IESO assets including accounts receivables in favour of the Trust. This item is being discussed amongst all parties. If this proceeds, the IESO will have to amend/restructure its current credit facilities with TD Bank, OFA, and OEFC as all are unsecured pari-passu.”

Thanks,

John

From: John Kim

Sent: Friday, October 06, 2017 10:16 AM

To: Lisa Stein <Lisa.Stein@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>;

William Tan <William.Tan@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>

Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>

Subject: FW: IESO credit facility

Partial good news on Energy's side.

I will reach out to Anthony again to nudge things along on IESO side.

John

From: McKinlay, Tom (MAG) [<mailto:Tom.McKinlay@ontario.ca>]
Sent: Friday, October 06, 2017 10:07 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>
Subject: RE: IESO credit facility

John,

I can now confirm that we are comfortable with the wording of the IESO intercept letter agreement (subject to the very minor revisions illustrated in the attached draft).

I am still working to determine who will sign for Energy and I'll let you know shortly.

Tom.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]
Sent: September 27, 2017 11:50 AM
To: McKinlay, Tom (MAG)
Subject: RE: IESO credit facility

Hi Tom,

Just following up on this one. Let me know pls. if it would be timely for us to follow up with your client at Energy.

Thanks,

John

From: John Kim
Sent: Monday, September 25, 2017 2:03 PM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Subject: RE: IESO credit facility

My apologies....this email was sent to the wrong address.

From: John Kim
Sent: Thursday, September 21, 2017 11:42 AM
To: Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>

Subject: IESO credit facility

Hi Tom,

Pls. see attached draft letter agreement to get the discussion going. I believe you saw the short briefing note Ron shared with Steen on Tuesday.

We are available for a chat today to address any questions or comments.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

From: [Gadi Mayman](#)
To: [Ronald Kwan](#)
Cc: [Anna Strathy](#)
Subject: Re: Intercept letter agreement IESO MOE OFA
Date: Monday, November 06, 2017 5:53:54 PM

Fantastic. One item done, now we just need to get the protection agreement in place for the Ministers to sign.

Thanks,
Gadi

On Nov 6, 2017, at 5:51 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

Hi Gadi,

FYI. The letter is signed, and the credit facility too.

Ron

From: Gavin He
Sent: November-06-17 17:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Usman Zahid <Usman.Zahid@ofina.on.ca>; John Kim <John.Kim@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA

Hi Ron,

FYI – please see attached a scanned copy of the intercept letter agreement signed by Energy and IESO.

Regards,
Gavin He

From: John Kim
Sent: Wednesday, October 25, 2017 1:57 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Here you go.

Thanks,

John

From: John Kim
Sent: Wednesday, October 25, 2017 1:49 PM
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Ron,

There was a version control issue. We will fix and resend shortly.

John

From: Ronald Kwan
Sent: Wednesday, October 25, 2017 1:16 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John,

The "confirm" paragraph was dropped altogether, and the new IESO bullet that was at the end was moved up to that part of the letter instead? I likely missed the flag on that change. Is Legal okay with that?

Ron

From: John Kim
Sent: October-25-17 12:42
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Cc: Gavin He <Gavin.He@ofina.on.ca>; Usman Zahid <Usman.Zahid@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Fyi.

From: Gavin He
Sent: Wednesday, October 25, 2017 11:03 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: John Kim <John.Kim@ofina.on.ca>; Sarah Neville <Sarah.Neville@ofina.on.ca>;
Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>

Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

We have put the letter in a letter agreement format as you suggested below. Could you please take a look and let us know if this is the right format?

Thanks,
Gavin He

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:35 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Please send me a final draft for review

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:34 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

You just need to add letter head and signature titles and lines

From: John Kim
Sent: Wednesday, October 25, 2017 9:31 AM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Thanks Lisa.

Could you help us put this in a letter agreement format, with signing lines, etc? We can do the letter head, etc.

From: Lisa Stein
Sent: Wednesday, October 25, 2017 9:25 AM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

I am fine with #1 below. In any event, as previously discussed, OCCSDC is an agent of MOECC, not Energy.

From: John Kim
Sent: Tuesday, October 24, 2017 5:42 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

We can push back saying – we are already saying payments that are not appropriations of Energy is already ruled out. But then there is a risk of delay. If we are specifically ruling out this Ontario Climate Change solutions Deployment Corp. that is a known exemption, is it a problem to include?

From: John Kim
Sent: Tuesday, October 24, 2017 5:25 PM
To: Lisa Stein <Lisa.Stein@ofina.on.ca>
Cc: Sarah Neville <Sarah.Neville@ofina.on.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Lisa,

Are we able to work with the #1 below?

Thanks,

John

From: Victor Buza [<mailto:Victor.Buza@ieso.ca>]
Sent: Tuesday, October 24, 2017 5:18 PM
To: John Kim <John.Kim@ofina.on.ca>; Tom McKinlay (MAG) <Tom.McKinlay@ontario.ca>
Cc: Lisa Stein <Lisa.Stein@ofina.on.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: RE: Intercept letter agreement IESO MOE OFA Sept 2017-rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi John.

<!--[if !supportLists]-->1. <!--[endif]-->The changes made are acceptable except for those made to the penultimate paragraph – please amend this para to read as follows:

For further certainty, the OFA and ENERGY acknowledge and agree that the intercept provision as provided for herein, and this letter agreement generally, shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than ENERGY or through Ontario Climate Change Solutions Deployment Corporation.

<!--[if !supportLists]-->2. <!--[endif]-->Re the “[Energy to confirm]” comment, we are ok with the sentence as written and don’t need to confirm anything further.

<!--[if !supportLists]-->3. <!--[endif]-->Kimberly Marshall would sign the Intercept Letter on behalf of IESO.

Victor

Victor Buza | Senior Counsel

Independent Electricity System Operator (IESO) | T: 416-969-6079
1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Web: www.ieso.ca [[ieso.ca](http://www.ieso.ca)] | Twitter: [IESO_Tweets](https://twitter.com/IESO_Tweets) [[twitter.com](https://twitter.com/IESO_Tweets)] | LinkedIn: [IESO](https://www.linkedin.com/company/ieso) [[linkedin.com](https://www.linkedin.com/company/ieso)]

This email message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution, or copying of this email message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this email message.

From: John Kim [<mailto:John.Kim@ofina.on.ca>]

Sent: October 24, 2017 4:11 PM
To: Tom McKinlay (MAG); Victor Buza
Cc: Lisa Stein; Anthony Martinello; Michael Boll; Gavin He
Subject: FW: Intercept letter agreement IESO MOE OFA Sept 2017-
rev_Markup4Clean_EnergyEdits_OFA IESO Edits Oct 24_v3.docx

Hi Tom, Victor,

I don't yet have final go ahead but we are close so sharing the latest version. Pls. advise if any issue with the attached. Copying Michael at Tom's request.

Also for the square bracketed part [Energy to confirm], pls. advise if any issue with that part as well.

Pls. also let me know who at IESO would sign.

Thanks,

John

Y. John Kim
Director, Electricity Finance Branch
Ontario Financing Authority
e-mail: john.kim@ofina.on.ca
Ph: 416-212-6996

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

<Intercept Letter MOE_OFA_IESO Fully Executed - Nov 6 2017.pdf>

From: [Gadi Mayman](#)
To: [Ronald Kwan](#); [Ken Kandeepan](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#)
Subject: Re: OFA : IESO
Date: Thursday, April 13, 2017 10:46:47 AM
Attachments: [OutlookEmoji-.png](#)

Thanks, this came up at this morning's rate mitigation meeting, and the IESO people were happy to hear that we're on this, as they're a little nervous about how they're going to finance the regulatory asset until OPG is set up to take it on and pay for it.

I'm adding Ken to close the loop on the exchange that we had last night about the OPG letter - I asked Serge to add in the OFA, and he instructed Steen to do so, and, yes, the letter will be posted, at some point, on OPG's website.

In the half hour that I was able to attend the meeting, the discussion was around the legislation. The biggest point of contention was about OPG's need to have a direct recourse to ratepayers, and the legislative need for a thread directly from individual ratepayers to the lenders to the GA smoothing. The OEB doesn't like that concept at all. The other point that is of interest to us is that they are not looking at putting the guarantee mechanism into the legislation - although there will be some description in the legislation about what, I think they called indemnification will be needed, and then they will leave the guarantee to a commercial one. No surprise that OPG's dealer advisors are saying they need a full provincial guarantee, which OPG is pushing back on, and saying that the guarantee can only be if a future government changes the value of the regulatory asset (this is where the indemnification language in the legislation is necessary). Cindy, of course, as well as me for different reasons, is fussed about the nature of that guarantee, so we asked if they could sort that out with the dealers before the legislation is tabled. We don't want to end up with the dealers holding OPG hostage six months from now - not that they'd ever do that, would they Mike 😊
?

I'm sure Scott will send out his fuller synopsis later today, and that'll also cover what happened in the last hour, after I'd left.

Gadi

From: Ronald Kwan
Sent: Thursday, April 13, 2017 8:37:54 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He
Subject: Re: OFA : IESO

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#)
Subject: Re: OFA : IESO
Date: Thursday, April 13, 2017 8:37:55 AM

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

From: [Gadi Mayman](#)
To: [Ronald Kwan](#)
Cc: [Mike Manning](#); [Anna Strathy](#); [Gavin He](#); [Ken Kandeepan](#)
Subject: Re: OFA : IESO
Date: Thursday, April 13, 2017 11:26:27 AM
Attachments: [image001.png](#)

Yes, that was the crux of the OEB's concern, given that's not how the system currently works when a ratepayer doesn't pay their bill.

From: Ronald Kwan
Sent: Thursday, April 13, 2017 11:06 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He; Ken Kandeepan
Subject: RE: OFA : IESO

Hi Gadi,

All very interesting.

On one point, how would a thread directly from individual ratepayers to the lenders to the GA smoothing work? That would seem particularly challenging.

Ron

From: Gadi Mayman
Sent: April-13-17 10:47
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Mike Manning <Mike.Manning@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Re: OFA : IESO

Thanks, this came up at this morning's rate mitigation meeting, and the IESO people were happy to hear that we're on this, as they're a little nervous about how they're going to finance the regulatory asset until OPG is set up to take it on and pay for it.

I'm adding Ken to close the loop on the exchange that we had last night about the OPG letter - I asked Serge to add in the OFA, and he instructed Steen to do so, and, yes, the letter will be posted, at some point, on OPG's website.

In the half hour that I was able to attend the meeting, the discussion was around the legislation. The biggest point of contention was about OPG's need to have a direct recourse to ratepayers, and the legislative need for a thread directly from individual ratepayers to the lenders to the GA smoothing. The OEB doesn't like that concept at all. The other point that is of interest to us is that they are not looking at putting the guarantee mechanism into the legislation - although there will be some description in the legislation about what, I think they

called indemnification will be needed, and then they will leave the guarantee to a commercial one. No surprise that OPG's dealer advisors are saying they need a full provincial guarantee, which OPG is pushing back on, and saying that the guarantee can only be if a future government changes the value of the regulatory asset (this is where the indemnification language in the legislation is necessary). Cindy, of course, as well as me for different reasons, is fussed about the nature of that guarantee, so we asked if they could sort that out with the dealers before the legislation is tabled. We don't want to end up with the dealers holding OPG hostage six months from now - not that they'd ever do that, would they Mike 😊
?

I'm sure Scott will send out his fuller synopsis later today, and that'll also cover what happened in the last hour, after I'd left.

Gadi

From: Ronald Kwan
Sent: Thursday, April 13, 2017 8:37:54 AM
To: Gadi Mayman
Cc: Mike Manning; Anna Strathy; Gavin He
Subject: Re: OFA : IESO

Hi Gadi,

Will do.

Ron

On Apr 13, 2017, at 8:00 AM, Gadi Mayman <Gadi.Mayman@ofina.on.ca> wrote:

Hi Mike and Ron, could one of you please get back to Anthony and handle this?

Thanks,
Gadi

From: Anthony Martinello <Anthony.Martinello@ieso.ca>
Sent: Thursday, April 13, 2017 7:41 AM
To: Gadi Mayman
Cc: Kim Marshall; Michael Boll
Subject: OFA : IESO

Mr. Mayman,

Kim and I would like to set up a 30min call with you to discuss the proposed Fair Hydro rollout and the potential impact on the IESO credit needs.

Would you be available next week/preferred date? Let me know and I will send out a meeting invite.

Regards

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.



From: [Anna Strathy](#)
To: [Ronald Kwan](#)
Subject: Re: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:32:25 PM

Thanks Ron. I'm following up with Gadi.

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

On Oct 25, 2017, at 4:32 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: [Gadi Mayman](#)
To: [Anna Strathy](#)
Subject: Re: OFA-IESO Credit Agreements
Date: Wednesday, October 25, 2017 6:39:06 PM

I'm leaning that way, but I agree that I should talk to Ken H. first. I'll call him tomorrow.

On Oct 25, 2017, at 6:32 PM, Anna Strathy <Anna.Strathy@ofina.on.ca> wrote:

Hi Gadi, please see Ron's email below. Given that you've conditioned the MO on #3, I'm wondering whether we proceed with the exemption as the most expeditious option. It may be worth a call to Ken Hartwick first to confirm that OPG is onside with that approach. What do you think?

--

Anna Strathy
Special Policy Advisor to the CEO
Ontario Financing Authority
416.325.8032

Begin forwarded message:

From: Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Date: October 25, 2017 at 4:32:01 PM EDT
To: Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: OFA-IESO Credit Agreements

Hi Anna,

I understand from John that when he spoke to Anthony at the IESO this afternoon that he said that their negotiation with OPG Trust could take several weeks. While OPG Trust wants this, IESO is asking for the rationale, including wanting to talk to Moody's and DBRS. So this could still take a while.

In that context, and the context of the next IESO settlement period in November, would Gadi prefer to 1) go forward with the intercept letter and credit facility with the intercept provision in the next few days, for now, with the potential of a later amendment to accommodate a potential outcome of the IESO-OPG discussions; 2) push harder on OPG, with 1 or 3 as a backup; or 3) seek the Minister's exemption from the intercept policy?

Ron

From: [Ronald Kwan](#)
To: [Gadi Mayman](#)
Cc: [Anna Strathy](#); [Gavin He](#); [Mike Manning](#); [Ken Kandeepan](#)
Subject: Re: Rate Mitigation Implementation Meeting - April 25, 2017
Date: Tuesday, May 02, 2017 12:08:10 PM
Attachments: [GA - IESO Role and Financing v4 - extract v11.pptx](#)

Hi Gadi,

As discussed, I beefed up the fiscal and accounting risk point, and moved it up.

Ron

From: Ronald Kwan
Sent: May 1, 2017 6:48 PM
To: Gadi Mayman
Cc: Anna Strathy; Gavin He; Mike Manning; Ken Kandeepan
Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017

Hi Gadi,

We made a few tweaks to the slides.

Energy's PW.

Ron

From: Ronald Kwan
Sent: April-28-17 15:19
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017

Hi Gadi,

Would you have an idea when Energy will be circulating the draft TB Report Back?

I was talking to Steen on Wednesday on the IESO request for an expanded credit facility from the OFA, and he asked for some input.

Some potential input is attached, modifying the flow chart that Energy had in its March CabSub, to show a potential role for the OFA for financing the IESO (at least on an interim basis).

Steen also asked if we'd be looking for an approval. I'm not sure that is needed (assuming that IESO eventually can still sell the asset to OPG's SPV eventually, as planned), but perhaps a "Note" in the Minute would be helpful, along the lines of "Note that [the Minister of Finance will direct] the OFA [to/will] provide a credit facility to the IESO to facilitate ..."

Energy's PW.

Ron

From: Gadi Mayman
Sent: April-25-17 23:28
To: Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>
Cc: Anna Strathy <Anna.Strathy@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>
Subject: Fw: Rate Mitigation Implementation Meeting - April 25, 2017

From: Katona, Keley (ENERGY) <Keley.Katona@ontario.ca>
Sent: Tuesday, April 25, 2017 4:30 PM
To: Steen Hume (CAB); Kaili Sermat-Harding (ENERGY); Michael Reid (ENERGY); Carolyn Calwell (MCSS); Scott Nelms (ENERGY); 'jeffrey.lyash@opg.com' (jeffrey.lyash@opg.com); HARTWICK Ken - FINANCE (ken.hartwick@opg.com); Rosemaire Leclair; Mary Anne Aldred (maryanne.albred@ontarioenergyboard.ca); Campbell, Bruce (bruce.campbell@ieso.ca); Kim Marshall (Kim.Marshall@ieso.ca); Scott Thompson (CAB); Helen Angus (MOHLTC); Steven Davidson (MTCS); 'Martine Band'; 'CROZZOLI Carlo -CBUSDEV&STRT'; Gadi Mayman; LEE John -TREASURY
Cc: Serge Imbrogno (ENERGY); Andrew Teliszewsky (ENERGY); Matt Whittington (ENERGY); Baker, Carys (ENERGY); Kyle MacIntyre (MOF); David McLean (MOF); Robert Foster (MOF); jordan.penic@ieso.ca; 'sarah.branco@ontarioenergyboard.ca'; Turnevicius, Lorraine; catriona.king@opg.com; Francesca Bungaro-Yemec (ENERGY); Martin Schlaepfer (MOF)
Subject: RE: Rate Mitigation Implementation Meeting - April 25, 2017

Please find attached action items from today's meeting.

From: Katona, Keley (ENERGY)
Sent: April-24-17 5:02 PM
To: Hume, Steen (ENERGY); Sermat-Harding, Kaili (ENERGY); Reid, Michael (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Nelms, Scott (MOF); "jeffrey.lyash@opg.com" (jeffrey.lyash@opg.com); 'HARTWICK Ken -FINANCE (ken.hartwick@opg.com)'; 'Rosemaire Leclair'; 'Mary Anne Aldred (maryanne.albred@ontarioenergyboard.ca)'; 'Campbell, Bruce (bruce.campbell@ieso.ca)'; 'Kim Marshall (Kim.Marshall@ieso.ca)'; Thompson, Scott (MOF); Angus, Helen (TBS); Davidson, Steven (CAB); 'Martine Band'; 'CROZZOLI Carlo -CBUSDEV&STRT'; Mayman, Gadi (OFA); 'LEE John -TREASURY'
Cc: Imbrogno, Serge (ENERGY); Teliszewsky, Andrew (ENERGY); Whittington, Matt (ENERGY); Baker, Carys (ENERGY); MacIntyre, Kyle (TBS); McLean, David (MOF); Foster, Robert (CAB); 'jordan.penic@ieso.ca'; 'sarah.branco@ontarioenergyboard.ca'; 'Turnevicius, Lorraine'; 'catriona.king@opg.com'; Bungaro-Yemec, Francesca (ENERGY); Schlaepfer, Martin (ENERGY)
Subject: Rate Mitigation Implementation Meeting - April 25, 2017

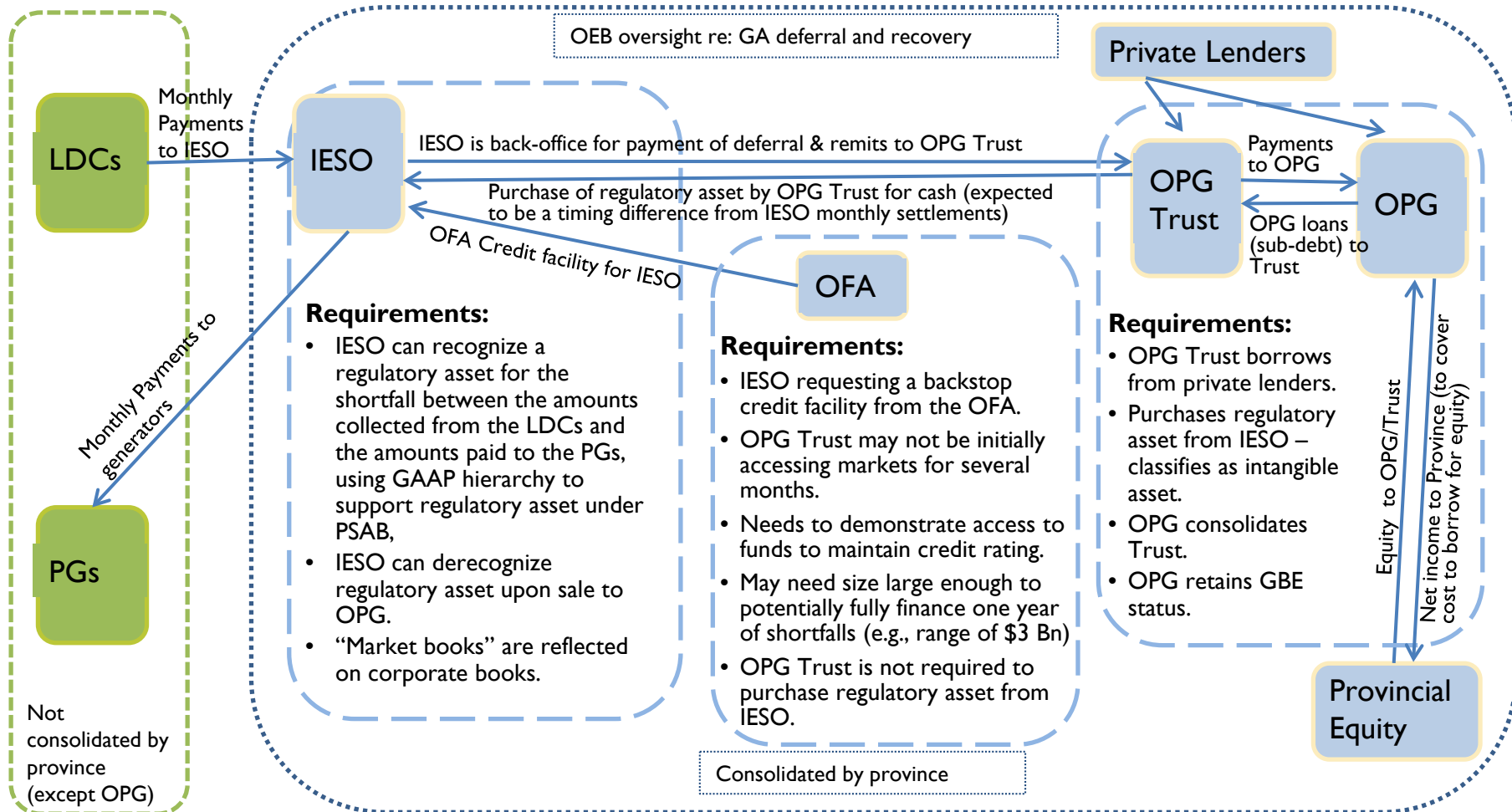
Good afternoon,
Please find attached the material for discussion tomorrow morning.
Thanks,
Keley

GA Financing Plan: Role of IESO

Corporate and Electricity Finance Division
May 1, 2017

GA Smoothing – Proposed Structure

- The following diagram provides an overview of the proposed GA smoothing structure, as well as interactions between sector entities and elements required to meet accounting objectives.



► **Note:** Proposed structure is subject to legal and accounting confirmation, absent that confirmation, there would be a fiscal impact to the province.

IESO Financing Requirements

- IESO will need to ensure that it continues to have the funds available to provide payments to generators on a monthly basis as part of the IESO settlements process, while recoveries from LDCs for Regulated Price Plan (RPP) / Fair Hydro Plan eligible customers will be lower.
- IESO has an existing credit facility from the OFA; however, a new or expanded facility is being requested.
- IESO would require financing to compensate generators should it be required to hold any portion of the unpurchased Regulatory Asset beyond each monthly settlement period.
 - OPG Trust is not expected to access public capital markets for several months after the start of the FHP, and may be purchasing the asset with a lag vs monthly settlements. Also, OPG Trust is not required to purchase the regulatory asset.
 - IESO will need a credit facility for interim financing.
 - IESO may require longer-term financing to maintain the deferral financing plan, should the OPG Trust not be able to access debt markets on a timely basis for purchase of some or all of the regulatory asset.
- Based on Ministry of Energy's GA deferral plan, it is estimated that approximately \$2.5-3.0 billion need to be deferred per year for over first 10 years, equal to approximately \$200-250 million per month, on average.¹
 - The size of the credit facility required to backstop IESO could be \$2.5 to \$3.0 billion. [TBC]
- There is a fiscal impact and accounting risk on OFA financing of the IESO requirements if it were to be more than temporary borrowing to cover timing differences on when the OPG SPV buys the regulatory asset vs the timing of IESO monthly settlements.
 - Even if IESO is allowed to recognize the Regulatory Asset, on consolidation into Public Accounts, the regulatory asset would not be expected to be recognised, so that the deferral amount and associated financing costs would be expected to have a fiscal impact..
- The monthly and annual amount being deferred and the resulting monthly amounts can be substantially different than forecast based on various factors, such as seasonality or electricity usage, as well as potential changes to electricity costs from OEB rate decisions, with IESO estimating deferral amounts as high as \$400 million per month.
- Other factors that may increase IESO's financing requirements:
 - IESO will also incur financing charges that will need to be refinanced.
 - The financing and administration costs that OPG Trust incurs will need to be paid.

¹ Based on Ministry of Energy's annual GA deferral amounts, assuming the monthly deferral is equally-weighted.